

OLD CONSTITUTION
AND
PRESENT ESTABLISHMENT
IN
CHURCH and STATE
Honestly ASSERTED.

In some Seasonable OBSERVATIONS
upon Two late Scandalous Pamphlets,
Publish'd in the Name of Mr. Earbery:

The One Entituled,

Elements of Policy Civil and Ecclesiastical.

THE OTHER,

The Old ENGLISH Constitution Vindicated.

By a Person of HONOUR.

L O N D O N :

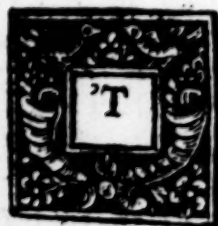
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THE
P R E F A C E
TO THE
R E A D E R.



IS somewhat above a Year since the Two Treatises which are the Occasion of these Animadversions, first fell into my Hands; the former Entituled, Elements of Policy Civil and Ecclesiastical, &c. which I was desirous to peruse, because I expected nothing less than Demonstration from Political Principles; especially being put

into a Mathematical Dress. But when I had read it over, I confess I was strangely disappointed; for though I could not find any great Fault with the Definitions and Axioms he had there laid down, yet I was not a little surpriz'd to see how the Author could frame such Propositions, and draw such Corollaries, or Consequences from them, as he has done; and therefore it is against these, that the first Part of this Undertaking is chiefly design'd.

As to what he says in his Preface, concerning Truth, That though it may be despis'd and neglected, yet her Glories are to unprejudic'd Men, increased and brighten'd by Opposition; I readily join with him in it; and from this Concession I take the Liberty of enquiring into the Truth of his Propositions, as set down in his Elements, and still more expressly carried on and maintain'd in his Second Pamphlet, call'd, The Old English Constitution Vindicated: Touching both which for the present, I shall say no more than this, That it is impossible for Propositions, which clash and contradict each other, to be both alike true; and therefore I shall leave it to the Judgment of my impartial Readers, to determine on which Side Truth is most likely to be found; whether on his precarious Principles, and mistaken Notions of Facts, or on these Observations and Animadversions I have made upon them; whereof the first Part is design'd to examine the Propositions by themselves, and then to consider his Deductions, and the Precedents he has drawn from our English Histories, Charters, and Letters of some Kings, not long after the pretended Conquest; by which he endeavours to prove, First, "That those Kings were
"absolute, arbitrary Monarchs, and no ways de-
"pended upon their Great Councils, or Parliaments,
"in the making of Laws, or imposing of Taxes
"upon their Subjects. And Secondly, That they could
"by their last Wills and Testaments dispose of the
"Succession of the Crown to whom they pleas'd, with-
"out the Consent and Authority of the Estates of the
"Kingdom.

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I own, indeed, had it not been upon the Account of this latter seditious Label, I should never have given either you, or my self, the Trouble to have answer'd the former; because upon the first Reading of it, I thought it was only an Essay of some forward overconceited University Tutor; containing his particular System of Ecclesiastical and Civil Politicks, which he had thought fit to hold forth to his Pupils: And had he confin'd himself to that, which I thought had been his main, if not only Design, viz. to confute and expose the imaginary State of Nature, as laid down by some Hobbists, and modern Commonwealths-Men, I should have look'd upon it as a very honest and commendable Undertaking. But when upon a more narrow and close Review of them both, I perceiv'd he made Use of the present shameful Licentiousness of the Press for a Cloak to his Malice against the Ecclesiastical as well as Civil Settlement of both Church and State, under his present Majesty's happy Administration; charging the one with no less than Schism, and the other with downright Rebellion: I thought my self oblig'd, as a true Son of the Church, and a Loyal Subject, (since no Body else I found would draw their Pen in so justifiable a Cause) to enquire into the Truth of the Consequences, and Matters of Fact he has so Dogmatically laid down, and in which (after all) I can meet with nothing new, but the old Saw drawn over again; that which had been long ago vented in the several small Treatises of Sir Robert Filmer, (and new vamped up by his Follower Mr. Lesley,) here set forth in another more plausible Method (forsooth) of Mathematical Demonstrations, founded upon certain pretended unquestionable Principles, as well Civil as Ecclesiastical; to which indeed he has added some Arguments and Passages taken from the late Treasonable Book of Hereditary Right, whom this Master of small Arts has imitated (as far as he durst) in direct Opposition to his present Majesty's Title to the Crown, as also the Right of our present Bishops in their exercising any Ecclesiastical Functions.

I write

I write not this to stir up the Government to prosecute the Publisher of these Falshoods in the same Manner as it did him from whom he has borrow'd them; but only to forewarn young and unwary Readers from swallowing his pernicious Principles with an implicit Faith: And I must confess, that among those of his Predecessors that have wrote upon this Subject, I have not seen any who has shewn a greater Confidence, and given bolder Strokes for the Cause he has engaged in, and withal, that has handled it with less Judgment, and Understanding of that Constitution he therein pretends to vindicate, than this insolent Man. For the Justice of this Censure, I refer my self to the impartial Judgment of my Readers, after their candid Perusal of the following Pages, wherein I have endeavour'd to write without any Malice, or severe personal Reflections, since the Author is altogether a Stranger to me, not having known any more of him than the Two first Letters of his Name, had he not thought fit to Subscribe himself M. Earbery, at the End of his Preface to his Second Treatise.

But before I go further, I shall here give the Reader a Specimen of his Judgment, from his own
 Page 12. Words in the Preface to his Old English Constitution, "Where after he has asserted, " (and insisted upon) this Point, That an English " King cannot be Subject to the Parliament, abstractedly " considered, as an House of Lords and Commons, because he receives not his Power from them alone, but " succeeds to the Crown Jure Hereditario; he proceeds " thus;

" If we consult the Civilians, what Jus Hereditarium " means, we shall find it is Successio in omnia Jura Defuncti; and there are Two Ways of obtaining this " Right, viz. either by Testament, or without: As for " Instance, James the 1st was Hæres intestatus to Charles " the 1st, because though he was not made so by Will, " yet as Custom had ever made, without a manifest Will to the contrary, the nearest in Blood the " suc-

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'succeeding King, James, as such, had an indisputable
'Right thereto.

Now whoever will consider this his Definition of Jus Hereditarium, which prefers the Will of the deceased King (as to the Disposal of the Crown) before an Hereditary Right by Blood, must see that by his endeavouring to blend both these Rights together, he certainly destroys one of them: For if King James was Heir to King Charles, only because he died without any Will to the contrary; then it will necessarily follow, (from the Precedents he has there brought of Kings that dispos'd of their Crowns by their Wills, without Consent of Parliament) that the sole Property of the Kingdom was in them; and consequently that if King Charles had so pleas'd, he might have passed by his Brother, the Duke of York, and have left the Crown to his eldest Daughter the Princess of Orange, and the Prince her Husband; which certainly none, even of his own high Principles, will maintain; and yet this must necessarily follow, if what he has there asserted be true.

But the Truth of the Matter is, That since these Gentlemen cannot but be sensible, that Edward the Confessor before, as also the Four First Kings after the reputed Conquest, could not succeed to the Crown as next Heirs by Blood, but only as they claim'd a Right to it by Virtue of the last Will of their Predecessor, confirm'd by the Estates; or else as they were elect'd by them upon a Vacancy of the Throne; therefore they are forced to mix and interweave these different Rights of Succession, and by that means try to pawn them upon their unthinking Readers, as if they were all one and the same: For since by this Civil Law of Hereditary Right, one that had no Title to the Crown by Blood, could succeed to it by such a last Will, as is here asserted; and since it is a Maxim that Nullum Tempus occurrit Regi, i. e. no Time can bar the King's Privilege; I would fain know of them, if a King of England could so dispose of the Crown Five Hundred Years

Years ago, why he may not as well do so at this Day? And I would likewise be further satisfied, why the last Will of a King should (as these Men suppose) take Effect to the Prejudice of the next Heir by Blood, and yet that the Will and Pleasure of the King, declar'd and ratify'd by Act of Parliament, whereby the Right of such an Heir is wholly barr'd, and cut off, should not be of the like, or rather greater binding Authority, than such a simple Will made by the King alone upon his Death-Bed, without the Advice or Consent of the Parliament, as Representatives of the whole Kingdom?

Now when they shall fully answer these Two Queries, I will then grant, that a Civil Law Right by Testament, and a Common Law Right by Blood, are one and the same Thing: But till then, must maintain, that they put an evident Change upon the Terms of the Question; and impose if not upon themselves, yet at least upon their credulous Readers, and consequently that there was no such Thing as an Indefeasible Hereditary Right ever settled by the Ancient English Constitution.

I cannot here pass by another notorious Contradiction, which this Writer has given to
 Page 18. *himself in his Preface to the Constitution Vindicated; where, after he has given us some Instances of King Richard the Ist's sole Legislative Power, in laying what Taxes he pleas'd upon the whole Kingdom, both Clergy and Laity, he by his "Act, or rather Letter to the Pope, (part of which "is there recited) solemnly binds both himself and "his Posterity not to raise any Taxes upon the Church " (i. e. the Clergy in General) for the future.*

Now, if the Supreme Legislative Power solely resided in this King, as he would have his Readers to believe, then I desire he would tell us how he can reconcile this to what he has laid down in the Fourteenth Proposition

position of his first Treatise, where he says, But as to human Laws, their very P. 28.

Nature is mutable; and most certainly that Power which makes a Law to restrain it self, can dissolve that Restraint: And therefore, according to this Principle, every succeeding Monarch, being endued with the like Power, may break this Law, and lay what Taxes upon the Clergy he pleases, since no Law whatever can restrain the Supreme Power from revoking any Law that it self hath made, though never so many Years ago: For if the King be the sole Supreme Legislative Power, no Time can bar his Prerogative.

Having thus (I hope) in short expos'd the Self-Contradictions and Inconsistencies of this vain Man, and those of his Party, in the chief Instances they bring from our Records and Histories, relating to the Antient English Constitution; I wish it may have the good Effect hereby design'd; I mean, that it may convince them of their Errors and Mistakes; or if not, yet that it may prevent at least those who shall peruse this Treatise, from being led away from the Truth, by the plausible and specious (though deceitful) Arguments, pretended to be drawn from Scripture, Reason, and History, by those who do (though impotently) endeavour to prove, That the Kings of England now (like their Royal Ancestors) ought not only to be Absolute and Irresistible, upon all Accounts whatsoever, but likewise to have such an Indefeasible Right to the Crown, as that no Act, no Law, however made, should be capable of barring or defeating him of it. Both which Assertions (I hope) are sufficiently confuted in the ensuing Sheets.

But since these over-scrupulous Gentlemen pretend, it is out of a Conscientious Perswasion of the Truth of these Doctrines, that they refuse to take the Oaths by Law requir'd; or having formerly taken them, have thought fit to renounce them, since his Present Majesty's happy Accession to the Throne, and that they express their unfeigned Sincerity in so doing, by their patient submitting to the Penalties the Law has ordain'd for such Refusals: Now I own I have a real Com-

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passion for all truly tender Consciences, who do not make use of that Liberty for a Cloak to their Maliciousness; and do not wish that any Person should suffer for meer speculative Opinions, which do no ways influence their outward Actions, to the Disturbance of the Ecclesiastical or Civil Government, as it is now (God be thanked) established both in Church and State; therefore that they may avoid falling into Inconveniences by their own perverse Obstinacy, I hope they will not be displeas'd for my offering them some good Advice for their future Conduct towards his Majesty, and that Church from which they are now in so open a Schism.

Let me say then, since they enjoy the gracious Protection of the Civil Government under which they live, both as to their Persons, their Liberties, and Estates, which is a Favour they could not expect to have in any other Countrey, where they should in like Manner refuse to own its just Authority, I think the least Acknowledgment they can pay for such Clemency, is, to shew it in forbearing publicly to traduce our present Establishment by their false Representations *Vid. Constit. and Infamous Pamphlets; or if they can-Vindicat. p. 106.* not withhold their Hands from Writing, that they would at least behave themselves with more Modesty and Submission, and not carry their ill-grounded Resentments with such Arrogance and open Defiance of that Power which they know can crush them. And I further desire, that in the Books they shall hereafter take upon them to publish, they would first fairly reply to what has been wrote against them in this or in former Treatises, without recurring to their Ark of Strength (as some of them call it) that Book so justly censur'd, and for which the presumed Author has been so gently treated, I mean, the Hereditary Right to the Crown of England Asserted: which seemingly pointed at those Two Excellent Treatises of the late Reverend Dr. Higden, Entitled, A View of the English Constitution, and the Defence of it, yet was really design'd against her late Majesty's Title, and future Succession to the Crown in the

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the most Illustrious House of Hanover; which wicked Book, why he did not think fit to Answer, whether through want of Health, or because he would not break his Time from his better and more useful Studies, or that he thought it did not need any Confutation at all (since the first six Leaves are sufficient to satisfy any unbiass'd Reader, that there was no such Notion as Indefeasible Right of Succession from any Original Constitution) I shall not here enquire.

But since Mr. M. Earbery has adventured to repeat most of that Author's Arguments and Objections in his Old English Constitution, I presume it will not be amiss to return (as I hope I have here done) a more Satisfactory Answer to them, than as I know of has hitherto appear'd; which may serve for the present, till a larger and fuller Volume (now ready for the Press) shall be thought necessary to be published.

But as I am sensible how of late the Money and Time of too many common Readers has been bestow'd in the buying and perusing of a Multitude of Pamphlets, that have been wrote with great Warmth upon an unhappy Occasion, both by Lay-Men and some Divines, which has been still height'ned by our Enemies, who only made their Advantages of it; that those of both Parties, to whose Judgments I would chiefly appeal, may not as yet be at Leisure, or in a fit Temper to peruse such a Performance; I hope the Time will shortly come, when these Heats being abated, and Misunderstandings on both Sides rectified, they may think it necessary to spend some spare Hours on so useful a Subject; and that those who have been any ways misled by the pernicious Treatises above-mentioned, may be again set Right in their Judgments concerning the present Happiness we enjoy under his Majesty's Gracious Administration of Affairs, relating to our Ecclesiastical as well as Civil Constitution.

But

But whether this small Tract be ever publish'd or not, though it has cost me no little Pains in the Composing, yet with respect to my self I shall be very indifferent, provided the main End of Writing it be obtained; viz. All due Submission and Obedience be paid and yielded to the present Government, both in Church and State; which is the hearty Prayer of one, who wishes well to the Protestant Religion, as now by Law Etablised, and to the Civil Liberties of all honest Britons.



Some



Some necessary Animadversions and Observations upon Two late scandalous Pamphlets; the one entit'led, Elements of Policy, Civil and Ecclesiastical; the other, The Old English Constitution vindicated.


 Shall not trouble my self to remark any thing upon this Author's *Definitions* or *Axioms*, that take up the two first Leaves of the former Treatise; and therefore I shall pass to the first *Proposition* he has there laid down, which is thus.

Prop. 1. " If Government is founded upon the Consent of the People in a State of Nature, the Governor can have no more Power, than every distinct Member had before that Compact.

As to this *Proposition*, I need only observe, that if the Author, by the *Consent of People in a State of Nature*, does mean such a State as Mr. *Hobbs* lays down; I say then, that there never was any Time, when all Mankind, being equal in Power, could surrender it, or make it over by Compact, so as that the Governor should be no more than their *Representative*, without deriving any Authority from God; for that being only what the *Epicureans* and *Hobbists* affirm, I

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shall no ways take upon me to maintain. But as to *Coroll. 1.* that he would from thence deduce, *viz.* "That the Power of Life and Death cannot be transferr'd by Subjects to a Sovereign, because no Person, in a State of Nature, has a Power over the Life of another:

This (I believe) will not prove true. For that some Persons, in the mere State of Nature, had a Power, in some Cases, over the Life of another, may be evidently prov'd from the Example of *Adam's* Children, all whose Sons being (as I think I can prove) equal; so that none of them could claim any Supreme Authority over the other, each of these being Fathers of separate Families in a State of Nature, had a Power of defending themselves, their Wives, Children and Properties, against the violent Assaults of any, who should go about to invade or take them away; and consequently, if one of *Cain's* Family had murder'd one of *Seth's* Children, he might, in that Case, have either kill'd such a Murderer upon the Spot; or, if he had escaped, he might have demanded Satisfaction of *Cain* his Father, or Grandfather, for so doing; supposing he had still remain'd a Part of his Family; and upon his Refusal so to do, might have made War upon him, till he had deliver'd up the Murderer. From whence it plainly follows, that *Seth* might have done the like, for the Defence of whatever other Things he had so far made his Property, as to be necessary for the Preservation of himself and his Family; and had the same Power over the Life of others, for the necessary Defence of them.

As for the 2d and 3d *Coroll. viz.* "That all Men are still in a State of Equality; for no Individual can transfer more Right, than was his own, &c.; since they only serve to confute *Hobb's* Principles, I shall not concern myself about them.

As to the IId Proposition, *viz.* "Granting a State of Nature, the Power of the Sovereign is but borrow'd, and he is only the Representative of the People,

I can no ways maintain, that the Power of the Sovereign is only borrow'd, as he is the Representative of the People; for he is no doubt the Representative of God himself; yet however supposing, that after the Death of *Adam*, all his Sons or Grand-Children, (who for the Reasons above given,

given, were then equal) had then agreed to surrender up; and transfer the Supreme Power, which they had as Masters of separate Families, upon one or other of their Brothers, whether Elder or Younger, makes no Difference, (since the Elder Brother as such had no Right to command over the Younger); that Brother so chosen and elected by the Major Part of his Brethren and Relations, did thereby become their Civil Sovereign, and was not to be any ways resisted by them in any Thing he should do or ordain, for the common Good and Preservation of the whole Civil Society: Nor could the Persons that conferr'd that Power have claim'd any Right to reassume it, in any Case whatsoever, unless it should have evidently appear'd, that he acted directly contrary to the End of his Institution; *viz.* The Happiness and Preservation of all his Subjects, by going about to make War upon them, and take away their Lives; or to make himself absolute Master of their Liberties and Estates: For as it was for the better Security of these, that they first enter'd into a *mutual Compact* for their Preservation; so when the Ends of Government were by the violent Male-Administration of the Sovereign perverted and destroy'd, they would then have been in as bad or worse a Condition, than whilst they remain'd in the State of Nature, when each of them might by his own, and that of his Family's Power, or else by a Combination with others, have defended himself against whomsoever should go about to invade him: And this they might justify by that very Power, which they had conferr'd on him as their Sovereign. For as it was only by God's Grant and Allowance, that each of those Masters of Families had that Power over them, and in which Sense it was only a Divine Power; therefore upon the same Ground, the Person whom they invested with all their particular Powers, was likewise invested with God's Authority, since each of them were intended to carry on the Ends of all Government, as well *Oeconomical* as *Civil*, for the common Good and Happiness of Mankind in general; which End the Civil Magistrate so transgressing, he thereby ceases to be any longer God's Representative. And if it be objected, That these Masters of Families ought not to have done so, because having made over all their Power to another, they could no longer have any Right of judging what Actions or Commands of his tended to the Happiness or Destruction of the Civil Society; for that would be to make them both Judges

and Parties in their own Case. To this it may be easily reply'd :

That if in the State of Nature they could judge, what Designs and Actions of other Men tended to their particular Hurt or Destruction, so they could never entirely give up this Right, of judging every Man for himself, what Actions, or Commands of their Civil Sovereign tended to their common Hurt and Destruction; since they never agreed, when they enter'd into Civil Society wholly to give up that Right.

And this may be further made out by this Instance, That if their Sovereign had commanded them to act any Thing contrary to the Law of Nature, they were not bound to obey; and if they still reserv'd to themselves a Right of judging what was destructive to their Souls, they had likewise the same Right of judging what would prove so to their Bodies and Estates. But I know to this it will be objected, That this obeying the Supreme Magistrate's Commands may very well consist with the publick Peace, because they are still bound to *Passive Obedience* to the Supreme Civil Power, which could not be maintain'd, if the Subjects should, upon any Account whatsoever, have reserv'd to themselves a Right of *Resistance*.

To this I reply, That the Objector must give up what he at first laid down, as a necessary Condition of all Supreme Power, that no Man out of a State of Nature had a Right to judge of the Commands or Actions of that Power; and tho' indeed the patient suffering of any Punishment, which the Sovereign should inflict, is not any corporeal Resistance, yet it being a real Non-Compliance with, and Disobedience to, the Sovereign's Commands, it is all the Resistance that the Soul without the Body is able to perform, and is not by suffering really to obey what the Sovereign commands, but the quite contrary. For if he should command you to worship an Idol, which is against the Law of Nature, and you should tell him, you could not do it, but was ready to suffer for it, he would not take this for a sufficient Performance of his Command, which was purely to obey, but not to suffer for that Disobedience; as plainly appears by those famous Examples of the *Three Young Men* cast into the *Fiery Furnace*, and of *Daniel* thrown into the *Lion's Den*; both of them for not obeying the Edict of *Nebuchadnezzar*; and which sufficiently exposes the Inconsistency of that Phrase of

Passive Obedience, that some make use of, as being directly contrary to the Idea of Obedience it self, which is an Active and not a Passive Duty.

I have dwelt the longer upon this Head, because the Author has been very short in this Matter, both in showing us the true Original of Civil Power, and also what Measures of Submission and Obedience are due to it; and may serve to inform the Reader, that as there is no such Thing as an absolute arbitrary Power granted by God over the moral Actions of the Souls of Men, so neither was there any such Power granted him over the Lives, Liberties, and Estates of all his Subjects: And if there be any Civil Sovereigns that do claim such an absolute Dominion over them, I can only say, that such a Nation, or People, are not properly Subjects, but Slaves; which if they are contented with, and will submit to, as having never known any other; I shall only say in respect of them, that as they were at first bound to it by their own Consents, so such a Government cannot properly be call'd a Civil or Political State, but rather that of an absolute Master over a Family of Slaves; which State was certainly not of Divine, but Civil Institution

But as for what the Author lays down as his last Corollary to the Second Proposition: That,

“Hence also a Representative must be accountable to the Person he represents. This does by no Means follow from the *Proposition* before laid down. For although those Sons were descended from *Adam*, who agreed to chuse one of themselves for their Sovereign; yet might they reserve a Right of Resistance in Cases of such Extremity as is above describ'd; since his Authority ceasing by that *Original Contract*, which was intended for their Preservation, his Government was thereupon dissolv'd, and they were again reduced into the meer State of Nature, in respect of each other; and so being all equal, could not act as any Civil Authority, whereby to call him to an Account as his Superiors; because it is a Maxim in *Logick*, as well as in *Civil Power*, that *Par in Parem non habet Potestatem*.

The Third Proposition is thus, *viz.* “A Man (supposing a State of Nature,) cannot oblige his Children yet unborn, by his own Act, to submit to Government.

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This may be so far granted true, and yet Civil Government might at first have commenc'd by Fathers, and Masters of Families, in the manner as above set down; for if he could oblige his Children then in Being, who as Members of his Family, were bound to submit to his Acts as their Superior, so likewise his Children and Posterity, (though then Unborn) were virtually bound to continue the same Submission and Obedience to him, because it was not merely for the present Good and Happiness of those then alive, but also for all succeeding Generations, that their Ancestors at first enter'd into a *Civil Society*; which being ordain'd by God, ought also to be maintain'd and continued by them, for the same Ends for which it was at first instituted; and though as not being then in Being, they could not properly be said to be bound by the Compacts of their Ancestors; yet seeing that they succeeded to the same Property in their Estates, which those at first enjoy'd; and (one of the chief Ends of Government being to maintain that Property) therefore they are bound for the same Reasons to Support and Defend it, as their Predecessors had to institute it at first; since it was for the Maintenance of that Primary Law of Nature, *viz.* the *common Happiness and Good of Mankind*, which was the only End of all Civil Government.

And therefore the *Corollaries*, drawn from this *Proposition*, do none of them follow from it, as it is here explain'd. For first, I do not maintain, as Mr. *Hobbs* does, that "all Men are born in a State of Equality", so that there can be no *Jus Parentale*, 'or Power of Parents over their Children; or that every Man must therefore *be free from his Birth, and may refuse to be associated with his Fellow-Creatures*; since from the Principles I have before laid down, he is naturally bound to such an *Association*: Or much less, that they "will any ways contradict any" Passages in Holy Scripture that command Obedience "to Parents, but rather serve to enforce them. So that all the *Corollaries* he would draw from that Proposition (even as he himself hath worded it) are wholly unsequential: And as for the rest of what he there says, against placing the Foundation of all Government *in the People*, since it only concerns those that entertain Mr. *Hobbs's* Principles, I shall no ways trouble my self about them; but only take notice of his malicious Reflection upon all
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whom he calls "*Whigs*, and says, that those are the "true genuine ones who make their Exits by the Way "of *Tybourn*, and are Martyrs for the glorious Cause of "Liberty, *viz.* Of robbing on the High-Way: Nor do I know any honest conscientious *Whigs*, who maintain his Doctrine, *that no Man can be said to be guilty of the Breach of any Law; because every Man has a supreme Power in his own Breast* to dispense with, and take off the Obligation of *any humane Laws*; such a *Whig* may with much more Reason say, that from these his *Tory* Principles, the Civil Sovereign may grant Commissions that are not to be resisted, but upon Pain of Damnation, whereby his Officers and Guards may be empower'd to make War upon, plunder and destroy his Subjects whenever he shall think fit, to reduce them from their natural State of Liberty, to that of direct Slavery, or Servitude, such as meer Slaves owe to their Lords and Masters in our *West-India* Plantations.

As for the Fourth Proposition, which I shall not deny, I intend to explain, what Right Fathers of Families had over their Children, when I come (as I shall do in the following Propositions) to treat concerning that Authority. But to proceed,

Prop. V. *All Men have a natural Right over their Children.*

This I grant to be true, as of such a natural Right, and is not founded on their Consent; but however this Power belongs to them as Fathers of Families, and not as Monarchs, or absolute Lords over them. For if it had been so, and that their Parents would never have set them free, there would then have been in the State of Nature no Difference between Children and Captives taken in the Wars, or Slaves bought with Money; but they would have remain'd the perpetual Property of their Parents, as likewise the Issue of such Children to all Generations; and this would have reached to Daughters as well as Sons, since the Father might chuse whether he would set them free by marrying of them to any Husbands out of his own Family: which Opinion is sufficiently exploded by *Grotius* and *Puffendorf*, the most learned of our modern Writers on that Subject.

And

And here I cannot but observe, that the Author does no way confute Mr. *Hooker's* Opinion concerning the *Original* of Civil Government, that it sprung from the *mutual Consent* and *Compact* of Fathers of Families; as appears from his Quotation in the Margin out of his *Ecclesiastical Policy*, B. 1. c. 10. *To Fathers in their private Families Nature has given a supreme Power; for which Cause we see throughout the World, even from the first Foundation thereof, all Men have ever been taken as Lords, and lawful Kings in their own Houses.* Which Opinion, because he thinks it serves to confirm his own, he seems partly to approve of; and tho' it destroys the Equality of all Men in the Days of *Adam*, yet it no ways destroys the Equality of those Sons, as to any Civil Authority they had one over another. For as to the Right of *Adam's* eldest Son, (as Successor to his Father's Authority) to have been as much their Sovereign Prince as *Adam* himself, he ought first to have prov'd *Adam's* Power to have been as truly Civil and Monarchical, as that which I allow might have been begun by any of his Sons, in the manner I have above-mention'd; and if that had been so, then any other Father of a Family, who with his Wife and Children should happen to be cast upon some Desert Island, might, for want of a Superior Power over him in a State of Nature, be an absolute Monarch over his Wife and Children. I say, this ought first to be prov'd; for that Notion is indeed directly contrary to the *Definition* of Civil Government, that those who have wrote concerning it have given of it; that it is the Union or Combination of several distinct Families under one Supreme Head, or other Civil Governors, endued with the like Authority for their mutual Preservation, and Defence of their Lives and Properties, against all Enemies among themselves, or foreign Enemies from abroad; which could not have any Effect, whilst there was but one Family in the World; and therefore could not be Coæval with *Adam*: For if, as he allows, *Paternal Government is a Branch of the Civil Power*, then the Authority of a Father over his Children could extend no further than the Civil Power would permit; and consequently he might by that Prerogative take the Education of all Children out of the Power of their Parents, and command them to pay them no more Duty and Obedience as such; and if he grants (as he does)

does) *That every Parent had not the Supreme Civil Power*, then it is evident, that *Adam*, *Ibid.* as such a Parent, could not exercise it; and if he had it not, what he adds further could not be true, *That the Right of Primogeniture gave to the eldest Descendants the Supreme Power over the rest.*

So that all that follows to the End of this *Proposition*, is built upon this false Foundation; that "*Adam*, as he was "the first Person created in the World, had all Power, both "Paternal and Civil, invested in himself. Which was not so; and therefore the Reason he gives for it will also fail, "*That this Paternal Power was* *Ibid.*

"*not limited to his immediate Issue, but extended to distant Generations.* For if the Son was born under a natural "Subjection, so was also the Posterity of that Son; according to that *Axiom* of the Civil Law, *Qui servi nati sunt, omne in se Jus amittere.* This therefore is the Foundation of the Right of Primogeniture, and the Power of "the most early Kings".

In Answer to this I affirm, that as the Duty and Obedience which Children owe their Parents, is wholly Personal, and not properly due to their Grandfathers and Grandmothers; so likewise the Power and Authority of Parents over their Children, cannot by the Law of Nature belong to, or be assign'd over to any other; and therefore could not descend to *Adam's* Eldest Son at his Decease; since *Adam* himself not being absolute Lord and Master over the Persons of his Children so long as he lived, that Power could not descend to his Eldest Son, which the Father had not; and therefore that *Axiom* of the Civil Law here cited, will not prove the Matter in Dispute; viz. *That those that are born Slaves, do lose all Right over themselves*; for he ought first to have prov'd not only, that all Children are born such Slaves to their Parents, but also that this Right of being Lord over them, must have descended to the Eldest Son: For if the same Civil Law should take Place, then Slaves, as other personal Goods, ought to be divided among all the Children alike; and if the Elder Brother could not claim them, as such, they would, upon the Death of their Father, become free.

Besides, he has sufficiently confuted what he has already laid down, by adding, " That the Divine or *Id. P. 13.* " Natural Right of Parents over their Children, is confirm'd by Sacred Writ ". Now if by *Sacred Writ*, he means the Fifth Commandment, (as I suppose he does) *viz. Honour thy Father and thy Mother*; then if the like Honour be due to the Mother as to the Father, by the same Precept it will follow, that all the Authority which a Father can claim over his Children, should fall to the Mother, if she survives him, since he there owns, *That Obedience to Parents is a Part of Morality, and not founded upon Consent*: And therefore if *Eve* survived *Adam*, which she might do, although the Scripture says nothing of it, then it will likewise follow, That all *Adam's* Power over his Children fell to *Eve*, and not to *Adam's* Eldest Son, by Virtue of that Commandment.

I shall now consider what follows; *viz. That every Father has still a Right over his Children: But*
Ibid. *the King, who is the Supreme Parent, has by Virtue thereof a Superior Power over all other Parents, or Heads of Families, which aggregately constitute a Commonwealth. So that Kings are included in that Command, Honour thy Father and thy Mother.* All which being built upon the same false Foundation, falls to the Ground. For he should first have prov'd, that *Kingly Power* is the same with *Paternal*: For if that was so, *Paternal Power* being Personal would belong only to the King, since no Man can obey Two Fathers any more than Two Masters: So that 'tis evident, they have nothing to do one with the other, since no Civil Power can dissolve those natural Bonds or Relations that are between Parents and their Children. And though I allow that our *Church Catechism* has founded the Duty of Subjects to Kings and Princes, and to all other Civil Powers, upon the Fifth Commandment, yet that cannot proceed from the literal Sense, but from a moral or natural expounding of that Precept; for otherwise this Command would literally belong to the Supreme Powers of Popular Commonwealths as well as to Monarchs; and then the Civil Fatherhood, instead of One, might belong to several Hundreds, nay perhaps Thousands of different Persons, who may constitute that Commonwealth: which I suppose our Author will not admit of, since, with those of his Principles, no Government but Monarchy can be of Divine Institution. Prop.

Prop. VI. *If the Paternal Power extends to the same Actions that pertain also to the Civil, they must be mutual.*

This he thinks plain by his *Definition* 13th; viz. "Society or Commonwealth is a Body of Men,
" whose external Actions are limited, or re- P. 2.
" strain'd by some Power constituted therein".

And he says, "So a Family is a minute Commonwealth,
" and the like Power is in the Head thereof, P. 14.
" though in Subordination to the Supreme one
" in the collective Body the Commonwealth.

In Answer to this I need only say, that this *Proposition* is certainly false; for *Paternal* and *Civil* Power do not extend to the same Actions, and therefore they cannot be mutual; for a Parent, as such, has no absolute Power over the Life of his Issue in the State of Nature; for then it would be no Offence if he made them away as soon as they were born: Nor has a Parent a particular Power over their Persons so long as they live; which the *Civil* Power may justly Exercise; and as for the *Definition* by which he would prove his *Proposition*, it is certainly very short, if not erroneous, as being contrary to several Examples that may be brought out of Scripture; or else to Matters of Fact, that are either now in Being, or have been so in our own Times.

For as to the former, *Abraham*, whilst he was a Sojourner in *Canaan*, would have been a compleat Monarch before he had any Sons, and when he was only Lord over a Family of Slaves, either bought with his Money, or born in his House; so if he had been a single Man, or a Widow, it had been much the same Thing. And I myself once heard of a Gentleman, from those that knew him, who had then no Wife, and being a Planter in the *West-Indies*, inhabited a little Island, in which there were no other Families besides his own; nor did this consist of more Persons than his Chaplain, his Steward, and a few hir'd Servants, with a sufficient Number of Slaves to cultivate his Ground, and look after his Cattle; and yet I suppose no body will say that this Gentleman was a Monarch; although as having a Commission from the King over the external Actions of a great Body of Men, which

were limited or restrained by his Authority, he had no Superior. And therefore the Author's Consequence is very wrong, in confounding the Power of a Master of a Family with that of the Supreme Civil Power, and making them to differ no more than *secundum magis & minus*, as they are only subordinate the one to the other; where (as I have already prov'd) a Civil Society, or Commonwealth, whether it be in one or more Governors, is a Conjunction or Coalition of so many several Families, as may be strong enough to preserve themselves from Domestick Enemies, and likewise from Foreign ones; or else, if they are not strong enough for that Purpose, to make themselves Tributaries or Vassals to some greater Power that can protect them; as is the Case of several Tributary Princes, and one Commonwealth, viz. *Ragouza*, under the *Grand Signior*.

As for the rest of his Proofs that he has brought to make out, *That the Parental Power did not die with Adam, but was continued to After-Ages; as appears from Gen. 18. 19. I know that he will command his Children, and his Household after him, &c.* As to this I need only say, that this Text will do him no good to prove the *Proposition* which is here laid down, because the Obligation that lay upon *Abraham*, to worship and serve God, which is the Thing to be understood by *that &c.* would have obliged his Children, whether he had commanded them or not; and if every Command of *Adam*, as a Monarch, must have bound his Successors, though it had been never so unreasonable; it will then follow, That if *Adam* had been so fond of his Son *Cain's* Company, as not to have been willing to be rid of him, notwithstanding the Murder of his Brother, he might upon his Death-Bed have commanded not only his eldest, but all the rest of his Sons and Descendants, never to disinherit their Eldest Sons, for what Crime soever they should commit; which I suppose this Writer will not allow. Nor does the next Paragraph con-

tain any more Truth than the former; viz. *Ibid. p. 15.*

" *The Power also of Masters over their Servants*, proceeds from the same Root; for
 " those who had large Possessions, retain'd their Sons to Till
 " their Ground; whose Posterity by Degrees degenerated into
 " Servants or Slaves; from hence also came the Power of
 " Life and Death to be in the Master over his Family.

This

This Derivation of Masterly Power, as proceeding from the same Root as that of a Father, is very wrong, since we find no Footsteps of it in the Scriptures, but rather the contrary : For it seems, that *Cain* and *Abel*, when they offer'd their Sacrifices to God, were then married, and made distinct Families from that of *Adam*, or else the one could not have had the Firstlings of his Flock, or the other the First Fruits of his Ground to offer. And as for the Descendants of *Abraham*, though we do not find that *Isaac* ever made a distinct Family from his Father's, yet his Two Sons, *Esau* and *Jacob*, were parted from him several Years before his Death, and thereby became Masters of separate Families, without any Dependance upon each other.

And if we look into the Originals of the *Irish* Clanns, or *Highland Scots*, which were all one People at first ; we shall likewise find, that as many of them as are of the same Clann or Family, though they pay great Honour and Respect to their *Chief*, or *Head*, according to the Custom of that Country ; yet their Posterity to this Day, have never degenerated into *Servants*, or *Slaves* ; neither have the Heads of their Clanns ever had any Power of Life and Death over them. And I defy him to show me any one Instance in History, that ever any Family became absolute Slaves, or Servants, to the Head of their own Family, meerly as such. And indeed I need go no further than his own Quotation (I suppose from Mr. *Hooker*) *Ibid.*

in the *Margin*, viz. " Not that Slavery was
 " either of Divine or Ancient Institution ; but Power by
 " Degrees, turn'd voluntary Servitude by *Compact*, into
 " necessary Slavery, and vile Submission to prosperous
 " Brutality.

And therefore if *Adam's*, or any other Father's Children, who were kept by him or them to till their Ground, were not born Slaves at first, their Successors had no Right to reduce their Brethren or Relations into the State of Servitude ; unless they brought it upon themselves by their own *Compact*, which was no ways necessary, nor obligatory, any further than that *Compact* made it so.

But as for what follows in the next Paragraph, " That
 " *Cain* suffer'd in a judicial way for his Fratricide, by
 " a Solemn Sentence pronounc'd by his Father, and his
 " King :

In

In Answer to it I need only say, that I cannot but wonder at the Confidence of this Man in this Assertion. For let him but read the Relation of this Fact in *Genesis* the Fourth, and I challenge him to show me any such Solemn Sentence from *Adam*; the whole Proceedings therein being transacted between God and *Cain* only, without the least Mention of his Father's having had any Thing to do in it, who might have been, for ought appears to the contrary, some Miles distant from the Place where the Murder was committed. And in *Verse 17.* it is said, *Cain went out from the Presence of the Lord, and dwelt in the Land of Nod*: But if it had been said, from the Presence of his Father, it had been something to his Purpose.

As for what follows, I grant it to be true, that Men might not be able so well to subsist without Civil Government, if he means by such Government, one or more Persons appointed to govern several Families: But if by Civil Government he means that of Fathers or Masters of Families, (which he likewise owns to be Civil Government) I will undertake to shew him several Examples of whole Nations, in Three Parts of the World, *viz. Asia, Africa, and America*, who have for many Ages pass'd liv'd very amicably in their respective Districts, without any other Superior Power over them, besides that of such Masters or Fathers of Families in Time of Peace, and a Captain chosen by themselves in Time of War, whose Power always determines at the End of that Campaign or Expedition, until they have Occasion again for another: And then they may either chuse the same Person if they like him, or else may change him if they think fit.

But since he there owns, that Men may enter into Government by *Combination*; *viz.* Such Fathers of Families and Freemen; then doubtless these very Men may begin such a Civil Government in those Countries whenever they please. But if they can, or do obtain all the Ends of it without it, then it lies upon this Man of Propositions to prove, that they act contrary to the Law of Nature, if they think it more convenient for them to live without it.

As for his following Queries: "How could the Plough
" or the Harp deserve Place in the Scriptures,
Pag. 16. " yet the entering into Government be entirely
" omitted? How is this consistent with the Ac-
" curateness of the Sacred Writings?" As also, " To

“ To what Purpose are the Genealogies both before and after the Flood; were they to leave no more behind to the World, but the Names of Men that sound barbarous to those who understand not the Language of those Days?

As to the first of these Queries, I confess I am not able to resolve it any further, than into the Will or Design of the inspir'd Penman, when he wrote that Book; unless he can prove, that Civil Government was naturally in *Adam* and his Descendants, because their Names are expressly mention'd there.

As for the other Query concerning those Genealogies, I can give him a better Account than the bare transferring the supposed barbarous Names of Men to Posterity, which might much more likely proceed from *Moses's* Intention to declare particularly to the *Jews* (for whom the *Pentateuch* was chiefly design'd) the Lineal Pedigree, or Descent of *Noah* from *Adam* before the Flood, and from *Noah* to *Abraham*, the Father of the Faithful, after that Period: And it was for the same Purpose, that all the Descents from *Abraham* to *Jacob*, and his Sons going into *Egypt*, are likewise set down; which I think is a sufficient Account why those Names rather than any other should be recorded. And if the bare mentioning Men's Names, or Descents, would make them to be Civil Governors, the Author would do well to prove, that those Descendants from *Noah*, whose Names are recorded in *Gen. Chap. 10th* and *11th*, were all of them Civil Sovereigns. But to proceed to his next Par. (*ibid.*) viz. “ That after the Flood, the Government of the World was in the Hands of *Noah*; who had a Power over his whole Family, and consequently over all Mankind at that Time; as appears by his transferring the Sovereignty, or declaring a Successor: As Cursing and Blessing in those Days apparently was; as also is evident by *Ham's* Doom, that he should be a Servant of Servants to his Brethren: As also from the Blessing of *Jacob* from *Isaac*, *Gen. 27. 37. Behold I have made him thy Lord, and his Brethren have I given to him for Servants.*

This needs no other Reply than to deny the Matter of Fact, that *Noah* was such a Civil Sovereign over all Mankind. For if *Adam* had not such a Power, much less could *Noah* have it: But that this Sovereignty did not descend

scend (as it ought to have done) to his eldest Son, if it had been of *Divine Right*, the Writer himself is forced to own since it was certainly divided alike among *Noah's Three Sons*; and besides, he should have first prov'd, that *Noah* transferr'd his Sovereignty by declaring his Successor: for then that would have been but one Person: For the Text which he here cites for it, shews the direct contrary. Now if *Ham's Doom* was to be a *Servant of Servants* to his Brethren, in this Sense, he must then have obey'd Two Civil Sovereigns at once, which was impossible.

But had he consulted any learned Commentators upon this Text, he might have found that they do not make this Curse to have been fulfill'd in the Person of *Ham*, for there is no mention made in Scripture of his being a Slave to his Brethren; and therefore that could only be fulfill'd in his Posterity, when these Nations were conquer'd by the *Israelites*, who were the Descendants of *Canaan*, the youngest Son of *Ham*, as you may find *Gen. 10th.* where it likewise appears, that the *Hebrews* (afterwards called *Israelites*) were descended from *Heber*, the Grandson of *Shem*.

The like I may say of *Isaac's Blessing* upon *Jacob*, that his Brethren should be his Servants, was never literally fulfilled; for his elder Brother *Esau* was so far from being his Servant, that he and his Descendants were Princes, whilst *Jacob* was no more than Master of a private Family in *Canaan*; and therefore this Blessing is only to be understood by way of Prophecy concerning the *Edomites*, who about 700 Years after were subdued by the Kings of *Judah*, till at last they broke the Yoke off their Neck, according as *Isaac* had predicted.

Prop. VII. *Government is of Divine Right.*

I shall not dispute the Truth of this Proposition, but I deny the Consequence he would draw from thence, in *Corol. 1.* That no Government can be altered, or subverted, but by a Divine Command. This certainly will not hold for an universal Truth, because several Governments have been alter'd from Monarchies to Commonwealths, and from Commonwealths to Monarchies, without any such Command. *e. g.* The *Athenians*, after the Death of their King *Codrus*, who suffer'd himself to be slain to gain his Subjects

jects the Victory, who would have no more Kings, but re-
 turn'd the Government to themselves; And, on the other
 Side, the People of *Rome* having been brought into Subje-
 ction by the prevailing Power of *Julius Caesar*, and his Ne-
 phew *Augustus*, were depriv'd of the Supreme Power, and
 from a Commonwealth became a Monarchy; and I could
 give more Examples of this Kind, were there any Need
 of it.

Prop. IX. *The Supreme Power is irresistible.*

Having already shewn in what Sense the *Supreme Power is*
irresistible, and what not, I shall say no more upon that
 Head; but only take notice, that the follow-
 ing Assertion is not true, *viz. That the Id. p. 20.*
Supreme Power cannot be in the People, since
the contrary is evident from what has been said before. For
 I have already shown by the Example of the *Athenians*
 and *Romans*, that in Popular Commonwealths the Supreme
 Power was always in the People.

Prop. X. *The Supreme Power being in One or Many, is*
the Difference between a Republick and a Monarchy.

I should not deny the Truth of this Proposition, if there
 were no *Medium* between *Absolute Monarchies* and *Com-*
monwealths; but that there have been from the Original of
 Governments, such Things as *Limited* or *Mix'd Monarchies*,
 may be prov'd from the Histories and Laws of all the King-
 doms in *Europe*, except that of *Russia*. For however they
 may have been now changed, the Supreme Power in all
 those Kingdoms was vested in the King, and the Estates of
 the Kingdom, without whose Consent he could neither
 impose Taxes upon, nor make Laws for his Sub-
 jects. And therefore what the Author would deduce
 from this Proposition, is not true, *viz.* " That
 " if the King be only Part of the Supreme Id. p. 21.
 " Power, he cannot be the whole, Which
 " destroys the Difference between a Republick and a Mo-
 " narchy: Which is against the *Hypothesis*.

This indeed would be true, if there were no *Medium*
 neither between them: But I have prov'd the contrary by
 the Examples already given; and then the *Corollary* he would

infer from it, viz. "Hence those numerous Declarations in
 "Parliament, *That the King is subject to God alone*; That
 "the Crown of *England* is an Imperial Crown; are so
 "many Proofs, that *England* is no Republick: Conse-
 "quently the Supreme Power is in the King.

But by his Favour, I here deny his Consequence. For
 tho' it be granted, that the Supreme Executive Power is in
 the King, yet that the whole Legislative Power was never
 so, I will likewise appeal to the like Declarations in Par-
 liament: since in every Act or Statute that is now made,
 and has been made for about 400 Years, the Enacting Part
 has run in these Words, or much to the same Effect: "Be
 "it therefore Enacted by the King's most Excellent Majesty,
 "the Lords Temporal and Spiritual, and Commons in the
 "present Parliament assembled, and by the Authority of
 "the same". Where the Word *Authority*, plainly refers
 (and can do no otherwise than) to all the Estates above-
 mention'd: and therefore, that the Supreme Power is in
 them not separately, but conjunctly with the King, is no
 such false or absurd Notion, as he would make it: Nor
 will his following Proposition prove it so:

Prop. XI. *That the Supreme Power must be plac'd in
 such a manner, that in Cases of Emergency it may be capa-
 ble of acting.*

Now it is evident, that altho' the Supreme Power of
 making Laws, and giving Money, be placed in the King
 and the Two Houses conjunctly; yet they can and do act
 together in all Cases of *Emergency*, whenever there is Oc-
 casion either to make new Laws, or impose Taxes upon
 the Subject. And therefore, since the King can likewise,
 whenever he pleases, command the *Militia* of the King-
 dom for the Defence thereof, either against Domestick Re-
 bels, or Foreign Enemies; the Supreme Power, taken either
 way, is always capable of acting: And therefore the Con-

sequence he pretends to draw from *Defini-*
 Id. p. 23. *tion 1.* is not true, viz. *Inability to act must*
proceed from some external impediment, or
from the Nature of that Power which is limited or re-
strained.

This may be very true in one Sense, and yet false in ano-
 ther: For tho' the King is not hinder'd by any external
 & Impedi-

Impediment from the sole Power of acting, in making Laws and raising Money; yet he is hinder'd from it by the Nature of the Power it self; when the first King, at his Constitution, gave his Consent, that his Power should be so restrain'd; and therefore it is no such Absurdity or Contradiction, as the Author would make it.

Prop. XII. *The Supreme Power cannot be in Kings, Lords, and Commons jointly, if the King has a Power of calling and dissolving Parliaments.*

Altho' this Proposition is not to be deny'd, if by Supreme Power is only meant the Executive Power, yet the Reasons he gives for it will not hold. The first is, "That tho' the Part cannot be the Whole, yet the Part is essential to the Whole. When therefore Part of the Supreme Power is dissolv'd, the Supreme Power then ceases to be; which is contrary to Axiom 12. *Id. p. 24.*"

To this it may be thus reply'd: Tho' the Two Houses of Parliament (as 'tis granted) may be dissolv'd when the King pleases, yet does not their Power absolutely cease to be; for then the King, being the whole Supreme Power that remains, might, by his own Edict or Proclamation, revoke and make void any Act of Parliament, ever so solemnly passed; which yet he cannot do. But tho' the Power of a Parliament may cease for a Time *in Actu*, that is, as to the actual Execution of its Power; yet it does not cease *in Potentia*, or potentially, as to the Execution of those Acts, which were so solemnly made; since the Judges, and all other inferior Magistrates, are bound to observe them: Nay, the King himself is oblig'd by them, as they are his own Acts, passed in the most Supreme Manner, by and with the Consent and Authority of the Lords, and the whole Body of the Nation in their Representatives. And that the Authority of a Parliament does not wholly cease, but remains (as the Lawyers term it) in *Aveyance*, appears by this, that the King was oblig'd anciently, by several Statutes, to call a Parliament once every Year, or oftner, if need were; and after that, once in Three Years; till very lately, when the King and the Two Houses, for urgent Reasons, thought it necessary to prolong the Time of their Sitting to the End of Seven Years.

Besides, if a Parliament had not a virtual or potential Existence, several Laws would be of no Use or Validity; as particularly that Clause of the 25th of *Edward III.* whereby it is Enacted, "That if any other Case (suppos'd to be Treason) which is not above specify'd, does happen before any Justices, they shall tarry without giving Judgment of the Treason", till the Cause be shewed and declared before the King and his Parliament, whether it ought to be judged Treason, &c.

Now this Proviso would have been altogether in vain, if there were not some Treasons, which the King and his Parliament might judge to be so; which however were not directly against the King's Person and Authority; and those other Overt-Acts therein mention'd. 2dly, That if a Parliament is to judge of such Treasons, it is necessary that it have an inherent Power so to do, whenever it shall sit. So that when the King calls a New Parliament, he does not give Being to a mere *Non Ens*, but only brings that Power into Act, which was *potentially* in the Lords and Commons before. 3dly, Several Acts of Parliament are appointed to continue for such a Number of Years, or else to the first Session of the next ensuing Parliament: Now this would be a vain Establishment, if the King, by the Dissolution of a Parliament, could destroy the very Being or Right of all future Parliaments. His 2d Reason is, "That, by *Axiom 8.* that Power which can restrain another, is superior: But Dissolution of the Houses not only restrains, but puts an End to their very Being.

In Answer to the first Part of this Argument, I say thus: That if Restraint were a good Reason to prove Superiority, then the Two Houses would be in some Sense superior to the King; since an Act made by them, with his own Consent, so far restrains him, that he neither can by himself, nor his Judges, inferior Magistrates or Officers, either transgress, or legally dispense with them from their putting it in Execution: But that a Dissolution does not put an absolute End to the very Being of a Parliament for the future, I have already prov'd, and therefore need not repeat it.

But it seems he himself is sensible, "That
 Id. p. 25. " it will be urged against these Reasons,
 " That in Commonwealths, the Presidents,
 " Stadtholders, and Doges, may convene, or disperse the
 " Estates;

“ Estates; yet the Supreme Power may remain still in the
 “ latter: To this he immediately replies: But this Case is
 “ different; ’tis done by no Restraint, nor against the Con-
 “ sent of the Estates”. But to this it is my Turn to sub-
 join, That as to the Dissolution it self of the Estates, they
 are as much dissolved *for the Time* under a Commonwealth,
 as under a Monarchy; only he will have the one call’d a
Dissolution, and the other a *Dispersion*; which is indeed
 only a Distinction without a Difference. Neither is the
 Dissolution of the Estates in our Limited Monarchy any
 more done by Restraint, or against their Consent, than it
 is in a Commonwealth, where they are dissolved *for a Time*
 by the Stadtholder, or Döge: Since it being a Part of the
 Constitution, at first settled and agreed to by the Nation,
 that the King, or the Supreme Magistrate, should be en-
 trusted with the Power of Calling and Dissolving Parlia-
 ments; it is no more a Restraint upon the Estates in a Mo-
 narchy, than under a Commonwealth, to be so summon’d,
 and again dissolv’d, *for a Time*; because both at first pro-
 ceeded alike from the free Consent of that Nation or Peo-
 ple, at the very Original Constitution of the Government.
 But if the Supreme Legislative Power must needs be in the
 King alone, because he has the Power of dissolving the
 Estates, then the Emperor, and the King of *Poland* at this
 Day, are the sole Supreme Powers in the Empire, and in
Poland. The like may be affirm’d of the Estates of *Scot-*
land, Hungary, Denmark, and Sweden; which whilst they
 had such Assemblies, or that they were of any Authority,
 tho’ the King had the Power of calling and dissolving them,
 yet had he not the sole Legislative Power. So that this
 Writer must either deny, that these were truly Kings, or
 else that the Power of dissolving the Estates, when their
 present Business is dispatch’d, is any Proof of their being
 the sole Supreme Power.

Prop. XIII. *All Governments are abso-*
lute in such a Sense, that there must be in Ibid.
them a Supreme Power, from which there is
no Appeal.

This I grant to be true, as to all Civil Appeals; and
 therefore the King and Parliament, in their Legislative and
 Judicial Capacity, are the *only Supreme Power*, from which
 there

there lies no Appeal: For with them alone an Appeal may be lodged from all other Courts whatsoever, or from any Judgment or Determination given by the King himself in his Privy-Council.

But is it any good Argument, which he in the next Page lays down, " That if there be a Power, it
Id. p. 26. " must be simple in it self, and consequent-
" ly supreme, by his 13th *Axiom*; which is,
Page 4. " that *All Governments have a Supreme*
" *Power in them.* This must be granted:

But it does not follow, that by *simple in it self*, must necessarily be understood the Judgment or Authority of *one single Person*: For since both the King and the Two Houses, in their Judicatory and Legislative Capacity, act jointly all together, and as they agree in Will, they are to be reckon'd as one *simple and supreme Power*. And this made a Speaker of the House of Commons, in a Flourish to the King, compare him and the Two Houses of Parliament to the *Trinity*, because tho' they differ as to their Persons, yet they agree in Will.

" As for the other Part of his Disjunctive; (or if it must be Complex) if there be
Page 26. " Two Powers, one must be either inferior,
" equal, or superior to the other; which consequentially
" supposes one Supreme, or Two Equal
Page 2. " Powers: If one be Supreme, there can be
" no Appeal from that Supremacy, by *De-*

fnition XI.

Now, let the Reader but consider what has been already said, and the Difficulty presently vanishes: For in their Legislative Capacity, neither the King, nor the Two Houses, are Supreme, but all Three *Co-ordinately*; and consequently, since from any one of them, there may lie an Appeal to all Three together; therefore there can be no *Appeal from that Supremacy, even by this 13th Axiom.*

As for the *Corollary* he deduces from that *Axiom*, That
" hence, if all Absolute Governments are Tyrannical, all
" Governments are so, because they are all Absolute": This is very fallacious; for no body asserts, that all Governments are Tyrannical because they are Absolute: But this must be granted, that of all Sorts of Governments, Absolute Monarchies are the most apt to degenerate into Tyrannies; that is, to usurp a Power which God never endued them with,

with, viz. to destroy and ruin the Well-being and Happiness of their People by Oppression and Injustice, either from themselves, or their inferior Magistrates and Officers, who act by their Orders.

Prop. XIV. *The Laws that are a Barrier between the Prerogative-Royal, and the Liberties of the Subject, are not destructive of the Supreme Power in the Hands of the Prince.* Id. p. 27.

'Tis a Question (he says) equivalent to this in *Grotius*: *An summa Potestas Promissis Imperantium Populo factis, de Modo & Ratione imperandi tollatur?* But this he concludes in the Negative: "For if these Promises are not made into Laws, they are of no Judicial Force.

All this I grant to be true; but then to apply this to our Constitution, he should first have proved these Two Propositions: First, That the Rights and Liberties of the *English* Nation only depend upon, and are deriv'd from certain verbal Promises or Engagements of the Prince. 2dly, That these Promises (if they were so deriv'd) were never passed, nor made into Laws. Now both these can be prov'd otherwise: For First, The People of *England*, as all other Nations rais'd upon the Ruins of the *Roman* Empire, descend'd from the Ancient *Goths* and *Germans*, and had particular Privileges, which the Subjects under Absolute Monarchies were Strangers to. 2dly, That these Rights and Privileges having been invaded by some Kings, who would by that Means have made themselves Absolute Monarchs, that is, sole Lords and Masters of the Lives, Liberties and Properties of their Subjects; they have been forced (for their own Quiet and Safety) further to ratify them by their own Acts and Charters confirm'd by their Estates, as is notorious in *Magna Charta*, and *Charta de Foresta*; as also in that remarkable Statute *de Tallagio non concedendo*, by which King *Edward I.* after divers Breaches and Infringements upon their Liberties, was at last fain to pass a Law, wherein he oblig'd himself, and his Successors, never for the future to impose any Taxes upon the Nation, without the Consent of the Estates in Parliament: Which Privilege was also enjoy'd by the People of *France*, before their Kings made themselves Absolute by the raising and keeping up great Standing Armies.

As

As for what he further says, about the Difference between
 Divine and Human Laws, That "the Divine
 Ibid. p. 28. "are not to be dissolved by any Human
 "Power; but as to Human Laws, their
 "Nature is mutable: This is not to be deny'd, any more
 than what follows, thus: "And most certainly that Power
 "which makes a Law to restrain it self, can dissolve that
 "Restraint, unless, at the same Time, he devolves so much
 "of his own Power to another Person, as to make him the
 "Superior, *i. e.* by making him a Guardian of those Laws;
 "which consequently gives that Person a Coercive Power:
 "Which Fact deposes the Sovereign, and
 Page 2. "deprives him of the Supremacy, by Def-
 "inition XI.

In Answer to this, to avoid all unnecessary Repetition, I
 need say no more, but grant, that if the King be the sole
 Supreme Legislative Power, he can make no Law that can
 restrain himself; but he may alter it, or dispense with it,
 (which is much the same thing) whenever he pleases.
 But this being the Matter in Dispute, should have been first
 prov'd. For, as to the "Absurdity that he supposes will
 "follow, if this be not granted, that otherwise he must
 "devolve so much of his own Power to another Person, as
 "to make him the Superior, *i. e.* by making him a Guardian
 "of those Laws, which would make such a Person his Supe-
 "rior, and give him a Coercive Power over himself, &c.

To this I reply, that it is no true Consequence from
 those Premises. For the King's Chancellor, with the Judges
 and inferior Justices, are those to whom, by the Constitu-
 tion, the Guardianship and due Execution of all Penal and
 Statute-Laws is entrusted: And if they shall neglect their
 Duty, it is the King's Office to prosecute and punish them
 for it; but if by false Opinions, and erroneous Judgments,
 they shall conspire with him to break the Fundamental Laws
 and Privileges of the Kingdom, they are liable to be im-
 peach'd and punish'd for so doing, whenever a Parliament
 shall meet to do Business, and redress the Grievances of the
 Nation; which they indeed ought to take care of, before
 they grant the King any Subsidies, or Taxes whatsoever.
 But if the King will not permit a Parliament to sit and
 redress these Grievances, but will still obstinately persist,
 after due Petitions and Remonstrances made to the con-
 trary: If those complained-of Grievances tend to the sub-
 verting

verting of the Constitution; as for Instance, by his taking upon him to make Laws, raise Money, or change the Religion of the Nation, without Consent of Parliament; the People in general may, in this last Necessity, resist Force with Force; since this is not done by any Superior Coercive Power, but by way of Self-defence, as Equals may act against Equals in the State of Nature. And therefore this does not depose the Sovereign Power of the Prince, nor deprive him of his due Supremacy, because his Power was always limited, and could not extend it self beyond its Bounds. But if the Laws are no longer a *Barrier* between the King's Prerogative, and the Liberties of the Subjects, than whilst he pleases; such a Barrier would signify no more to their Security, than if the *French* King should have offer'd the *Dutch* such and such Towns for a *Barrier* against him, but still with a Reserve to himself, of keeping them under his own Power by sufficient Garisons, which they should not be able to turn out, tho' there should be ever so much Need or Reason for it.

But this Propositioner does most grossly either delude himself, or his Readers, in what he has laid down upon this Head. For first he says, the Promises of a Prince do not bind, because they are not made into Laws: But in this last Paragraph, supposing they are made Laws by *his own Act and Consent*, he being both the sole Legislator and Executor of these Laws, they can restrain him no further than he thinks fit; for let him break them ever so much, he still remains as much a Sovereign as ever he was before.

And as to what he cites for this out of *Grotius*, that *sicut Dominia, ita & Imperia Page 28. non amittuntur delinquendo, nisi Lex id statuat*; this is still to be understood, where these Transgressions or Delinquencies are either in smaller Matters, that are not Fundamental, and so do not alter the Constitution; or else, where such Privileges wholly proceeded from the gracious Concessions of some Absolute Monarch, or Conqueror, to a subdued Nation; which was never the Case, either of the Old *English* Inhabitants, or of the New *Norman* Subjects, who came in with him whom they call the Conqueror.

But since this Writer will needs cite *Grotius*, to prove that Kings are not to be compell'd, or punish'd for their Delinquencies; he ought likewise, if he would have shewn

himself a fair Adversary, to have cited what follows in the same Chapter, §. 17. *Siquid Populus adhuc liber futuro Regi imperet, per modum manentis Præcepti, aut siquid additum, quo intelligatur Regem cogi aut puniri posse; nam Præceptum est superioris, saltem in eo quod præcipitur, sed cogere non semper est superioris; nam & naturaliter quisquis habet Jus cogendi Debitorem---sed cum inferioris Natura repugnat, itaq; ex Coactione saltem Paritas sequitur, &c.*

From whence the Reader may observe, that contrary to this Author's Opinion, Grotius supposes, that a Free People may, in some Cases, compel their King to observe and perform the Oaths and Promises he has made them, without thereby becoming his Superiors. He should also have taken notice of a like Quotation in the next Chapter, §. 13. *Si Rex Partem habeat summi Imperij, partem alteram Populus aut Senatus, Regi in Partem non suam involanti, vis justa opponi poterit, qui eatenus Imperium non habet, quod Locum habere censeo, etiamsi dictum sit Belli Potestatem penes Regem fore.* Which evidently proves what I have already laid down, viz. "That if the King be not the Sole
" Supreme Legislative Power, and will invade that Part of
" it which is not his own, a just Resistance may be made
" against him, altho' the Power of making War, (i. e. of
" the Militia) should belong to him.

Id. p. 29. Prop. XV. *The Letter of the Civil Law has no External Force, without a Power to execute those Laws.*

This Proposition is so self-evident, that it cannot be deny'd: But then it will make nothing to the Purpose for which he brings it; since the Question is not, Whether the King is the Supreme Power to put the Laws in Execution? But what the People shall do, in Case he will not execute them at all? As, suppose he should pardon all the Murders and Robbers, that should be taken and condemn'd for several Years; and not only that, but should list them in his Guards, and encourage them to rob and spoil his People, would they long bear this? I suppose not; for when he ceased to protect them, they must also necessarily cease to obey him.

Prop. XVI. *The Supreme Executive Power, taken in such a Sense as borrow'd from the Legislative Power, is absurd.* Ibid.

I grant it indeed to be so, because the King is the Supreme Head of the Legislature; and if the Executive Power could proceed from the Legislative in that Sense, it would then be both the Cause and the Effect, and so cause its own Power: But if he had said, It had been absurd for one to maintain, that the People are the *Original Principle* from and by which the Supreme Power is deriv'd, both in Commonwealths and Monarchies, to the Supreme Magistrates of that Commonwealth, or Kingdom; it would not have been so absurd, as he here would make it; because it might be prov'd so from many Instances from the *Roman History*, e.g. when the first People of *Rome*, (consisting of all the Fathers of Families, and other Free Men, both married and unmarried) agreed to make *Romulus* their King: This Agreement was certainly made by those, who had then the *Legislative Power* in themselves; which they might still have retain'd, if they had so pleas'd, as well as they did afterwards upon the Expulsion of the *Tarquins*; and when they thus conferr'd the Supreme Executive Power upon *Romulus*, the Legislative was not thereby entirely given up to him, but it was plac'd in a Senate of the better Rank of Men, call'd *Patricians*, without whose Consent and Authority, he could make no Laws that should bind the People. So likewise, when the Senate and People of *Rome* were suppos'd to have made over all their Power to *Augustus Caesar* by that Law, call'd *Lex Regia*, whereby they convey'd the Supreme Executive Power upon him; yet the Legislative of the Senate still continued, whose Advice, and Consent, and Authority was at first necessary to the making all Laws or Edicts, that were issued out in the Emperor's and Senate's Name, under the Title of *Senatus consulta*; as the Author might have found, if he would but have consulted *Suetonius* and *Tacitus*: And tho' I own, that by the Power and Tyranny of the succeeding Emperors, the Authority of the Senate was little more than an empty Name; yet that it was otherwise all the Time of *Augustus*, and in the Beginning of *Tiberius's* Reign, is very certain.

And therefore what he has there said, to prove the Absurdity of the contrary Opinion, is not true, viz. from Definition XV. *That the Right of exercising*
 Ibid. *Power that is deriv'd from another Power, is*

but Representative: For if by *Representative*, he means only a Power delegated at the Will of the Parties represented, I grant that they may recall such a Power whenever they think fit. But the Case was otherwise, as to *Romulus* and *Augustus*; and tho' they deriv'd their Power from the People, yet they were not properly their *Representatives*, because they had no Right left to resist the Emperor, or revoke his Authority, unless where it had before ceased by excessive Tyranny and Oppression: As in the Case of *Nero*, and some other Tyrannical Emperors; of which I could give Examples enough, if there were Occasion.

Id. p. 30. Prop. XVII. *If the Supreme Executive Power is taken in such a Sense, as to suppose that no Laws can be executed, but by that Power, (which the * Words certainly import) that Power is irresistible.*

I must here deny the Consequence of this Proposition: For tho' no Laws can be executed without the Authority of the Supreme Executive Power, yet their Force, as Laws, does not owe their Original to him alone; and their not being in that Sense the Sole Supreme Power, he is not irresistible only upon that Account.

Again, let us suppose the Person that hath this Supreme Executive Power, should so far transgress and abuse the Ends of it, for which it was trusted with him, that instead of executing the Laws against Robbers and Murderers, he should not only pardon them, but take them into his Guards, and still allow them the same liberty of robbing and destroying his Subjects, would any body (besides such as are of this Author's Arbitrary Principles) maintain, that the People had not a Right to defend themselves, and rise up in a Body, all as one Man, with Arms to resist and expel this Enemy to Mankind, notwithstanding any Royal

* Nam ex Legibus nemini Jus adversus Regem nascitur, adeo ut eas revocet, nemini facit Injuriam. Grot. l. 2. c. 14. §. 6.

Commission they might pretend to? For it is not the true Regal Authority, but a meer Tyrannical Force that is thus resisted.

And as for his Proofs of this *Proposition*, they are either false, or such as will not make it out: For he says, by *Proposition XV. the Letter of the Law hath no external Force, without a Power to execute* *Ibid. p. 30.* those Laws: And as Resistance cannot be apply'd but externally, no Power can execute any Law, without or against the Supreme Power; as appears by *Definition II. and Axiom 8.*

In answer to which I need only observe, that all that he has here said, is a meer *Paralogism*, or else a begging of the Question: For though it is very true by *Proposition XV. viz. That the Letter of Civil Laws has no external Force, without a Power to execute those Laws:* Yet this is not the Point in Dispute, as is very evident, in that the Right of Resistance in the Instance above given, does not proceed from any express Civil Law, but only from the Law of Nature, and the Right of Self-Defence; which as to a whole Nation no Civil Authority can take away; and therefore it is not for the Execution of the Laws, but upon the not executing or abusing them, that this Right of Resistance commences: And as for his Conclusion, *That no Power can execute any Law without, or against the Supreme Power;* this too, is but a begging the Question, in supposing the Execution to be the only Supreme Power, which is the Thing to be prov'd: And therefore the *Corollary* that he would deduce from it, is likewise false, *viz. That the Kings of ENGLAND* *Ibid. p. 31.* are therefore irresistible, because they have evidently the Supreme Executive Power, and ever had, from the Time that Histories mention Kings to have been in this Island. For admitting that our Kings have always had the Supreme Executive Power, yet not having had the sole Legislative Power, they therefore cannot be the only Supreme Power in that Sense. And as for what follows, *That 'tis also well* *Ibid.* known, that the Oath of Supremacy was once a Part of our Constitution: To this I will say, And so it is still in the Sense it ought to be understood; for the owning this Regal Supremacy, was never intended to give up any Rights that the Nation was before possess'd of, but
was

was only made to exclude the Pope's usurp'd Authority in Ecclesiastical Matters, and to acknowledge that a King of England has no Superior within his Realm. But I wonder how this Writer can make the *Oath of Supremacy* to have been *once a Part of our Constitution*; when Page 63. of this very Treatise, he denies not only that the Prince can properly be Supreme Head of the Church, because his Power does not compleatly extend over Ecclesiastical Society; But also in the following Paragraph, he expressly declares, "The Clause, *Supreme Governor in all Causes, Ecclesiastical and Civil*, was an unhappy Expression, introduc'd at our Reformation; I may say an unguarded one, because I do not believe some Men were aware of the fatal Consequences, &c. Therefore if he will put another Construction upon the Words of this Oath, than what the literal Sense of it will bear, he does in Effect as good as deny the King's Ecclesiastical Supremacy, and consequently all that he would deduce from it, falls to the Ground, and signifies nothing; for if he will take the Liberty to affirm, that the King is not the sole Supreme Governor in all Ecclesiastical Causes, may not I take the same Liberty to deny, that he is the sole Supreme Power in Civil Matters? But he goes on and says, *Ibid.* p. 31. 'Tis urged, that his Executive Power is borrow'd from the Authority of the Lords and Commons. I answer, that this was confuted in Prop. 16.

In Return to this I say, that I know no body, who understands any Thing of our *English* Constitution, will maintain that Assertion; since all must own, that Kingly Government is much more Ancient than the Names or Distinctions of Lords and Commons. But since I intend to treat more fully upon that Head, when I come to make my Animadversions upon his Second Treatise, concerning his Vindication of the *English* Constitution; I shall therefore refer the Reader to what I have said in my Answer to that Performance.

As for what next follows, *Besides, it is absurd, that the Lords and Commons in that Case, should take the Oaths of Supremacy and Allegiance; or that Men should swear themselves to be the Supreme Power, that they will continue in Subjection to one another, is strangely absurd.*

Here

Here I think I need say no more to express the small Understanding of this Writer, than to show him that the Oaths of Supremacy and Allegiance taken by all the Members of Parliament, both Lords and Commons, before they can sit in their respective Houses, neither are, nor ever were, intended to be absolute, and without Reserve, so as to be thereby virtually bound to obey the King, as the only *Supreme Power*, in all his Commands. As for Instance, Suppose he should send them down a Bill, or intended Act, to surrender up all the Liberties and Privileges of the People into his Hands, and commanding them, upon their Allegiance to pass it, and thereby to constitute him an *Arbitrary Monarch*, instead of a *Legal King*; I am very well satisfied, that in such Case they were neither bound in Law, nor Conscience, to obey him; and if they were not, it is then as evident, that the King was never esteem'd by them to be the *only Supreme Power*. Nor is it *strangely absurd*, that Men should take an Oath to the King in one Capacity as publick Persons, and in another, as private; in the former acting as the Representatives of the whole Kingdom, and in the other as only private Subjects.

Prop. XVIII. *The Supreme Power is an indivisible Point: It is absurd, that where the Supreme Power is plac'd in many, there one Part of the Body should have a Coercive Power over the other, and be accountable to the other at the same Time.*

What he means by Supreme Power being an *indivisible Point*, I do not well understand, any more than how Politick Governments can consist of indivisible Points, or Atoms; but this much I am very sure of, that this Supremacy of Power is capable of several Degrees, *e. gr.* It signifies one Thing in *England*, and another in *France* where the King has a sole Power both Executive and Legislative. But yet for all that, his Subjects are not Slaves, but Freemen: For notwithstanding this, they have a Right and Property in their Lives and Estates, which cannot be taken from them without just Cause, and due Process, according to the Laws of that Kingdom.

But

But on the other Side, if we consider the Government of the *Czar of Muscovy*, where all the People own themselves to be his Slaves, and so he can take away their Lives and Estates at his Pleasure; yet nevertheless, since there are the Degrees of Noblemen and Gentlemen among them, he allows them an Hereditary Right and Property in their Estates, though revocable at his Will and Pleasure; whereas throughout all the *Ottoman Empire*, as the Christians are little better than Slaves under the *Mahometan* Governors and Bashaws; so the *Turks* themselves are not in a much better Condition: For as the ordinary Subjects are under the Arbitrary Power of the Bashaws, so the greatest of them can enjoy neither their Lives, nor Estates, but during the Grand Signior's Pleasure; and I should be glad the Author would satisfy us, which of these sorts of absolute Arbitrary Powers, derive the different ways of exercising it *from God*; for if they all of them derive it alike from him, then Slavery and Oppression must needs be of Divine Institution; And this will further serve to expose the Folly of his last *Corollary* to his XIIIth Proposition, *That hence, if all absolute Governments are Tyrannical, all Governments are so, because they are all alike absolute.* Since Governments are not Tyrannical because they are absolute, but because they too often use that absolute Power Tyrannically and Arbitrarily, and contrary to the Ends for which Civil Government was first instituted.

I shall now conclude with an Answer to the last Part of this 18th Proposition, *viz.* " That where the Supreme
 " Legislative Power is placed in many, there one Part
 " of the Body must have a Coercive Power over the other
 " at the same Time. Now that there is no necessary Consequence from this, is very plain, because the Supreme Executive Power being solely in the King, and the Chief Share of the Legislative being likewise in him, by Virtue of his Negative Voice in passing all Bills, the Supreme Power is not thereby divided, since it is the King's Sanction that gives Power and Authority to the Law, and in that respect the Legislative Power is no more divided, than if it were all in one Hand: for though Three different Parties, or Wills, must concur to the making of a Law, yet since it is no Law, till the King gives his Consent, it is as much his single Act, as if he made the Law alone; and
 granting

granting them to be all Three equal or *Coordinate*, it is a Maxim in Logick, as well as the Law of Nature, that *Par in Parem non habet Potestatem*; and therefore this is no setting up Two Independent and Equal Powers at the same Time, which I grant would be a manifest Contradiction; and therefore his concluding *Corollary* will make nothing to his Purpose; viz. *Hence the Supreme Power must be lodg'd in the Kings of England, because they have a Coercive Power manifestly over the Lords and Commons, as their Oaths of Supremacy manifestly declare.*

For though it is granted, that the King has a Coercive Power over both Lords and Commons, in Cases where they offend against the Laws, and no further; yet does it not therefore follow, that he can exercise an arbitrary Coercive Power over them, when they are acting in their Legislative Capacity: As suppose any future King should prove so tyrannical and unjust, as to Seize and Imprison both the Lords and Commons in the Two Houses of Parliament, and should then declare, that they should never stir out from thence, until they would renounce their Right of ever meeting there again: Surely none, but those of this Author's Principle, but would allow this to be a manifest and violent Breach of the Original Constitution.

And therefore I am not at all concern'd at his Conclusion from Dr. Falkner's Book of Christian Loyalty; that the *Afferting the Supremacy of Government in the Body of the People, is a Position big with Nonsense*; for 'tis Nonsense, like a whole Army's being Generals; since Supremacy of Government in the Body of the People, can be over no body, unless something can be Supreme over it self; whereas if there be no higher Power than what is in the whole Body of the People, this must be a State of Anarchy, where there is no Superior or Supreme.

Elements,
§c. p. 33.

To this I need only say, that I know no Commonwealths-Man in England, who maintains any such Supremacy in the Body of the People, as taken in this Author's Sense; viz for the whole aggregate Body of the Nation consisting of Men, Women, Children, Servants, Beggars, &c. But thus much I may still maintain, that

the Original of all Civil Government rightly instituted, and not begun by Force, must have proceeded from the Original Compact, or Combination of Fathers, or Masters of Families, and other Freemen, as has been already laid down: And if such Fathers had in their private Families a Supreme Power by the Law of Nature, (as this Author himself allows) I shall leave it to him to prove, that they could not assign, or make over this Authority to one or more Persons, or else might have retain'd and exercis'd it by themselves, as we find was anciently done by the *People*, taken in that Sense in the Commonwealths of *Athens* and *Rome*, where the People in their *Comitia Centuriatis*, or general Assemblies, made Laws by a Majority of Votes, that oblig'd both themselves and all others; since as to their collective Body they were the Supreme Power over the whole Nation, or People, and yet in respect of the particular Persons that constituted it, they were each of them subject to the *Legislative Power* of the whole.

The like I may also say of *Aristocracies*, such as were anciently the *Lacedemonians* in *Greece*, and in more modern Times the Government of *Venice*; where the Supreme Power being in the Great Council, or Body of the Nobility, who alone make the Laws, and chuse all Magistrates, the very same Persons in one Respect, are Sovereigns, and in another Subjects; and this without any Anarchy, or Confusion, any more than in *France*, where the King governs and makes Laws, by the Advice and Approbation of his Councils and Parliaments.

As for the *Latin* Quotations which he has there borrow'd out of *Grotius*, they are either brought to confute the Notion of a *Coactive* Force, that can reside in any Council or Assembly of Estates superior to the King; or else they relate to such Absolute Monarchies as *France* is, where the King makes a colourable Use of his Councils and Parliaments: I say, colourable; for it is not to controul or over-rule his Supreme Authority, but only by way of Advice or Confirmation, which they call *verifying* of his *Edicts*. Now seeing that I do not maintain the former Assertion, nor does the latter any way affect our *English* Constitution, I shall not think it worth my Trouble to make any Reply to them.

There

Therefore having here dispatched his *Political Elements*, neither shall I much concern my self with his Second Part, which contains those of *Ecclesiastical Policy*; because what he there lays down, has been already considered in divers late Treatises, written by more Learned Pens than mine; however, I cannot but by the by remark, That as much as this Author seems to insist upon the King's Supremacy, when he judges it makes for his Interest, yet in this Treatise he does, in Effect, utterly evacuate and deny it; as will appear by some of the following Propositions. *Ex. Gr.*

Prop. XVII. " The Civil Magistrate can
" exercise no Powers over the Church, but *Page 61.*
" what are Parts of the Civil Powers, and what every
" Prince, by natural Right, can claim, or such Power as
" must be conveyed to him by Revelation".

Now, if he be resolved to maintain this *Proposition*, I desire he would satisfy me, by what Right the Supreme Civil Magistrate can make any Penal Laws, either Corporal or Pecuniary, for the Punishment of Persons, who shall publicly refuse to own and profess the National Religion; since if the King and Parliament of *England* may exercise such a Power by Natural Right, every other Civil Magistrate may do the same; and by the same Rule that *Papists* or *Nonconformists* may be prosecuted in *England*, even to the Loss of their whole Estates, if it be carried on to the utmost; by the same Rule, the King of *Spain* may, by the Authority of the *Inquisition*, (which is wholly deriv'd from him) burn *Jews*, and all others that are counted *Hereticks* within his Dominions: So likewise may the King of *France* imprison, dragoon, send to the Gallies, or break upon the Wheel, all those that will not subscribe to the late Creed of the Council of *Trent*.

But I am more surpriz'd with this concluding Sentence, to prove what he has there said, *viz.*

" If any Man can tell me, how I shall
" know the Will of GOD otherwise than *Id. p. 62.*
" by Revelation, I will likewise give up the
" Question; otherwise the Proposition still remains good".

Now, if no Man can know the Will of GOD, but by Revelation; and that he himself can only judge, whether it were a Revelation or not, and likewise of the

Sense of the Words contained in that Revelation, unless God had, by the same Means, appointed an Infallible Judge to interpret it; then certainly the Civil Magistrate can have no Right to punish any Man, merely for the Exercise of that Christian Privilege and Liberty, which God himself has allow'd.

Now, whether he will disclaim the Character of a High-Church-Man, which allows all such Penalties, that are less than Death; or whether (as he has said

Page 63.

concerning the Word *Supreme Governor*) he was not aware of the fatal Consequence that may be drawn from thence, I will leave him to judge; as likewise, what his highest Church *Penance*, (*viz.* Excommunication) would signify, as to Mens Bodies or Estates, if it were not for the Writ *de excommunicato capiendo*? Which must be of Course issued out against the Excommunicated Party, in Case he will not submit to the Ecclesiastical Sentence; and being clapp'd up in Prison for his Contumacy, can no ways be discharged, until he has acknowledg'd his Offence, and engag'd to do *Penance* for the same, if it prove such as may deserve it. But he goes on, and says,

Ibid.

Prop. XVIII. *The Civil Magistrate cannot appoint Persons to exercise these Powers, viz.* those before-mentioned, which belong to the Bishops and Clergy: And if so, the King will not only be depriv'd of his Right of nominating any Person to a Bishoprick, or other Ecclesiastical Dignity, but also all Lay-Patrons and Bodies Corporate (as Colleges, for Example) will have no Right to present Priests or Clerks to any Living or Ecclesiastical Benefice; because his Reason for it extends to both: For it there follows, "If these Powers are distinct from the State, the Prince cannot *destine* the Persons, who are to exercise such Powers, by his Natural Right; because no Right to exercise Power can be transferr'd, that was not first in the Person that transfers". Now, if the Prince cannot *destine*, *i. e.* nominate or appoint Persons, who may exercise these Powers over some particular Dioceses, or in some Cathedral Churches or Parishes; neither can any Lay-Patron, Body Corporate, or College, claim or exercise any such Power; because whatever Right they have to such Benefices, they can derive it from the Civil Power only:
And

And if this be not to fall into the same Sentiments with the rigid *Scottish* Presbyterians, and Independents in *England*, I must submit to my Readers Judgment.

Nor will his following *Corollary* at all qualify or restrain what he has here laid down; viz. "Hence flows the compleat Independency of the Church; for if the Prince can neither *Commission* any Person to act in such Offices, nor give the Powers, nor suspend the Execution thereof; the Church comes compleatly under the Notion of a Religious independent Society.

I cannot but observe here, that in this Paragraph, the Man of Mathematical Method changes the Terms of the Proposition before laid down; since his Argument to prove it, is, the Prince's wanting Power to Commission such Persons so to act, &c. Now this is a plain Change of the Terms, which assert, *That the Prince cannot destine, or appoint Persons to exercise those Powers by his Natural Right.* And likewise, in the following Reason, he says, *That the Prince cannot destine the Persons:* But if *commissioning* any Person so to act, is to be taken in the same Sense with the Terms foregoing; then I am sure he expressly denies, not only the Regal Supremacy, but the Civil and Canon Laws of this Realm, by which the King nominates whom he thinks fit to Bishopricks, and other Ecclesiastical Dignities; as also do Colleges, and other Lay-Patrons, *destine* or present Persons to be instituted and inducted into Ecclesiastical Benefices and Livings. And if he denies them this Right, then all Lay-Patrons whatsoever, as also all Bodies Corporate, have great Reason to thank him for this wonderful Discovery.

But if, by the Word *Commission*, he means, to consecrate or ordain such Bishops, or other Spiritual Persons, as are so nominated or presented to them by the King, with the Consent of the Deans and Chapters; I know none in *England* allow the King any such Power, much less other inferior Lay-Persons, or Bodies Corporate; and therefore all that he had added to explain it, is to no Purpose.

Now as to what follows, that because the Prince cannot give those Spiritual Powers, mention'd by him, that therefore he cannot suspend the Execution of any such Powers; (*viz.* of *Excommunication*;) This I deny; for it is sufficiently established by our ancient Laws, that the Civil Courts in *Westminster-Hall* have, and do at this Day, in many

many Cases, issue out *Prohibitions* to the Bishops Ecclesiastical Courts, not to meddle in such Causes, as they do not judge properly to belong to them, nor to proceed to *Excommunication*, till such time as the Civil Court, from whence that *Prohibition* comes, has determined whether those Ecclesiastical Judges have such a Power or not. And we read of several Kings of *England*, and that after the pretended Conquest, who went further, and commanded the Bishop or *Ordinary* of the Diocese not to proceed to *Excommunication*, against any of the King's chief Officers or menial Servants, without his express Knowledge and License, for fear he might chance familiarly to converse with them, which when they were once *excommunicated*, he ought not by the Canon Law to do: But whether this was not a Suspension of the Execution of a Spiritual Power, he would do well to consider at his Leisure.

I need say but little to his *Proposition XIX.*
Ibid. p. 65. viz. "That the Prince can have no Power in
 " an Ecclesiastical Cause, as an Ecclesiastical
 " Person; nor can he claim any Power over the Church,
 " but as a Civil Magistrate".

This is directly contrary to the Opinion of our Ancient as well as Modern Lawyers, who expressly assert, That the King is *Persona mixta inter Civilem & Ecclesiasticam Potestatem*: And therefore *quod talis*, he has Authority to issue such *Prohibitions* out of his Court, as are above-mentioned; and also to hear and determine by his Courts of *Delegates*, all Appeals in Causes Ecclesiastical, that have been already adjudg'd in the Archbishops or any other Bishops Courts, concerning Matters Matrimonial or Testamentary; as likewise to give Judgment in the *Exchequer*, by the Judges of that Court concerning *Tithes*, tho' reckon'd as due to the Church by Divine Right.

Prop. XX. "The Church is subject to the
Ibid. p. 66. " State no otherwise than in Relation to in-
 " different Determinations; and we obey the
 " Prince, not as a distinct Ecclesiastical Governor, but as
 " the Supreme Civil Power in Society".

As to this Proposition, I would desire the Terms of it to be explain'd, for to me they seem somewhat obscure; and would be glad if he would tell us, what he means by the word *Church*, as also by *Subject*; for if by the word *Church* he means, (as it is defin'd in the Articles of the Church of England) *the whole Body or Society of Christians, both Clergy and Laity*, I believe no Member of the Church of England will affirm, That the *Church* is-subject to the *State*, taking the King (in his Sense) so to be the sole Supreme Governor of it, as that he may, if he pleases, make *Laws* whereby to alter all the Articles of our Religion, now profess'd in this Church and Nation: But if by the word *Church* he understands only its Representatives in both Houses of *Convocation*, I would then beg of him to prove, Whether these Ecclesiastical Assemblies, (consisting of the like Members they now do) are of Divine Institution, and consequently that their Articles and Canons do oblige the Consciences of the whole Body of Christians, as they are the Decrees of Christ's Representatives, without any further Sanction or Confirmation from the Civil Magistrate or Sovereign; because otherwise I cannot well understand how he can reconcile the Prince's Power of commanding Clergymen what Habits they shall wear in the Church, and what Postures Men shall use at publick Prayers, (which he reckons as Things that come under the Notion of Civil Actions) with what follows, when he says, " Yet the
 " Church may decree Ceremonies without *Ibid. p. 67.*
 " the Magistrate's express Consent; provided
 " in so doing, she does not contradict the declared Pleasure
 " of the Prince, so far as his Power extends". And my Reason is, because,

If those Habits or Postures are only Civil Actions, I cannot see how the Church has any Authority to decree such Ceremonies without the Magistrate's express Command: For as to the Exception he makes, *Provided, that in so doing, she does not contradict the declared Pleasure of the Prince*; this implicitly denies any Necessity of the King's License to the Two Houses of *Convocation*, by which they were empower'd to treat of and decree such Ceremonies, without which License they would have been guilty of a *Premunire*, if they had order'd any such Ceremonies: And methinks the Author himself has sufficiently qualified it, by the Limitation of the Prince's Authority in these Words;

so far as his Power extends, which in my poor Opinion had been very impertinent, if he had not question'd the Prince's Authority in that Matter.

And here I shall conclude what I have to say to these Elements, with his *Prop. XXII: viz. That Bishops are Essential to Christian Society.*

He says no more to prove it than this, " I lay it down
 " for granted, because it has been already sufficiently prov'd,
 " That Bishops were constituted by Divine Right, with a
 " Superiority over Presbyters and Deacons ; consequently,
 " as there is no Superior Order upon Earth, in the Church,
 " over Bishops, every Bishop in his Diocese is Supreme,
 " but with a due Subordination to *Christ*, the Supreme
 " Head over the whole Christian Society".

In answer to this, I shall only observe, that though he has asserted Episcopacy to be of *Divine Right*, yet I do not see that he has hitherto made it out by any plain Text of Scripture : But allowing, though not granting, that he can prove it to have been instituted by the Apostles, yet will it not follow, that it is of *Divine Right*, unless it could be prov'd, that it was instituted by *Jesus Christ* himself, either before or after his Ascension ; for a bare Institution of the Apostles will not fully prove it so, since they might do it upon prudential Considerations, as for the preserving the Unity of the Church from *Schisms* and *Heresies*, to which *St. Jerom*, as well as some other Fathers, ascribe its Original : And if the Institution of the Apostles is sufficient to make any Order of the Church of *Divine Right*, then that of Deacons would be so also, who were first appointed by the Apostles, and approv'd of by the Church, to administer to the Necessities of Widows, and other poor Christian Converts ; the Use and Practice of which is now quite ceas'd : And as for their present Office in the Church, which is chiefly to baptize, bury the Dead, and assist Ministers in the Delivery of the Sacrament to Communicants, I desire he would show us where any such Commission was given them at their Ordination by the Apostles ; and if they receiv'd it not from them, it must owe its Original to some later Ecclesiastical Constitution, which certainly cannot be of *Divine Right*. Q. E. D.

Besides, as to the *Divine Right* of our *English* Bishops, this Non-Juror would do well to prove their constant and unquestionable Succession from the Time of the Apostles, to make it clear to us : For though such a Succession should be granted, I mean so far as the Coming of *Augustin* the Monk into *England*, yet since our Bishops and Clergy do thereby derive their Orders only from the Church of *Rome*, in which, during some of the most corrupt Ages of that Church, there were divers Symoniacal Popes at *Rome*, and Bishops of the same Sort there, as well as in other Places, and which by the Canons of the Church would annul or make void all Orders conferr'd by them, which could hardly be avoided in so many Centuries of Years down to the *Reformation* ; some of our Archbishops and Bishops in *England* may have deriv'd their Orders from such Symoniacal Predecessors : And that an Archbishop of *Canterbury* might be guilty of Symony, was evident in the Case of *Stigand*, who was ordain'd Archbishop of that Province, during the Reign of *Edward the Confessor*, and was afterwards convicted, and depriv'd for Symony of his Archbishoprick, by a General Council of all the Bishops of *England*, held in the Second Year of *William I.* and without doubt there were many more in that Age guilty of the same Crime, considering the great Corruptions of the Manners of the Clergy in those Times, as is expressly related by our Historians, and for which I need go no further, than the dying Speech of that Pious King *Edward* above-mention'd.

And to come to the other Instance, that of *Anti-Popes*, whose Nomination, or at least Confirmation, was necessary, in those Days, to the making of a true Canonical Bishop ; this Writer would do well to prove, that every such Pope was himself rightly elected, when there were sometimes Two or Three, nay, Four Popes current. And who can tell whether he, whom the King and Clergy of *England* own'd for such, was a true and lawful Pope or not ; for that they themselves might be mistaken in this Point, appears by the *Deposition* of no less than Four Popes at once by the Council of *Constance* ; the last of these was *John XXIII.* whom not only *England*, but a great Part of *Europe*, had own'd to have been lawfully chosen, and yet he was at last depos'd, for obtaining the Popedom by Symony, as well as for other Crimes.

G

But

But the true Reason of his laying down this general Proposition, *That Episcopacy is so Essential to a Church, that no Orders, and consequently no Sacraments, can be had where there are no true Bishops*, I suppose is this, that then not only the *Presbyterian Orders in England*, (which is not the Point in Question) but also those of all the foreign Churches beyond the Seas, as well of the *Lutheran* as *Calvinistical* Profession, are no true Churches, for want of a true Succession of Bishops, as derived from the *Romish Church*; which since no *foreign Protestant Church* can pretend to, (as he himself acknowledges,) it follows, that none of those Churches can have any true Christians; and therefore, in the most favourable Sense, can be no better than meer *Catechumens*, or Candidates for Christianity; if they shall think fit to be baptiz'd and confirm'd by true Episcopal Bishops or Ministers; of which novel and uncharitable Opinion I need say no more, than that as it unchurches all those Churches above-mentioned, so it is contrary to the direct Judgments of our *first Reformers*, and also of the Bishops their Successors, till a contrary Notion began to be started, and publickly maintain'd by some *Arminian Bishops*, in the Beginning of the Reign of King *Charles the Ist*, and has been again revived, no doubt, with a Design of making the *P—r* to be a truer Christian than his Present Majesty, and all his Royal Issue, and their Descendants: But of this I forbear saying any more, the Consequences of it being evident enough; and therefore much Good may it do him, with his Mathematical Elements.



*Some Animadversions and Observations
upon a Treatise, Entituled, The Old
English Constitution Vindicated, and
set in a true Light, &c.*

HAVING already in the Preceding Sheets,
I hope, pull'd up the Foundation of Mr.
Earbery's Elements of Policy, both Civil and
Ecclesiastical, and the present Treatise being
only a *Superstructure* upon those false Foun-
dations, it will require the less Time and Trouble to an-
swer it: therefore in the following Sheets, I shall confine
my self to consider what he has built upon those sandy
Principles, and to expose his either wilful or affected Ig-
norance, both in Law and History, relating to the Ancient
English Constitution.

I shall begin with his *Preface*, the main Design of
which is to decry, First, the Antiquity of Parliaments in
General, and of the House of Commons in particular;
and then to lessen (as far as he is able) the Power and
Authority of both Houses; and after that, to do what he
can to assert *an indefeazible Right to the Crown in the next
Heir by Blood.*

In the First Page of his *Preface*, after he has
shown his small Talent of Wit, in ridiculing the Anti-
quity of Parliaments, "as if a Stranger to the Contro-
" verfy could be so silly as to imagine, that Parliaments were

“ as Ancient at least as the Flood, and that a House of Commons was preserv’d in *Noah’s Ark*? Is it not much more ridiculous to imagine, as this Writer, and his Oracle Mr. *L*—— have done, that *Adam* was the First, and all the Patriarchs mention’d in *Genesis* v. were so many successive Monarchs over Mankind, till *Noah*, the last of them, was preserv’d in the Ark, which is to make absolute Monarchy to have continued till the Flood, and yet then to have ceas’d, when *Noah* divided the whole World among his Three Sons?

But passing by all such trifling Insults, and vain Imaginations, let us now see whether this Writer has truly found out the Original of a House of Commons, which he makes, without any Proof, to have been *raised by our Kings to ballance the House of Lords*, whom he supposes to have been before the Commons, and Kings before them all; the Truth of which shall be consider’d in its due Place and Time.

He then proceeds to tell his Reader, from Sir *Robert Filmer*, that he cannot find any Reason to think the Commons were call’d before *Henry* the First, *who was undoubtedly an Usurper*. But in this he differs from his Friend Dr. *Brady*, for he will not allow them to have been more Ancient than the 49th of *Henry* the IIIrd. However, here he strikes in with him, and says, That till then they did not send any Members by a regular Election: Yet before he had troubled the World with his false Notions, he would have done well to have consider’d what has been wrote to prove their Election, and consequently their Original to have been far more Ancient; but let them have begun whensoever he pleases, I will prove ’em to have been many Years before any Succession of Kings was fix’d, or settled upon the next Heir, by an indefeazible Right of Blood, as those of his fanciful Notions endeavour to maintain.

He comes next to examine the Original
Ibid. p. 2. of the House of Lords, which he says was called *the Great Council* of the Nation, and *the Council of the Barons*; and he tells us a little lower, “ That these Lords were supposed to be the Supreme Power of the Nation, though even they were the Creatures of the King, they were created by him, and enjoy’d all their Honours and Privileges by his Favour. And thus

he

he thinks, to assert the Superiority of such a Parliament, is absurd; and this Argument alone is sufficient to prove Kings to be more Ancient than Parliaments, who were only call'd by himself.

I shall for the present allow it to have been so, but then shall take the like Liberty to enquire into the Beginning of Kingship among the *English Saxons*, from whom our First Kings, as well as People, derive their Original. Now it appears from all the most Ancient Chronicles, and Histories of those Times, that when the *English-Saxons* first entred this Island under *Hengist*, and *Horfa* his Brother, they came not with the Titles of Kings, but as Auxiliaries sent for, and hired by *Vortigern*, then King of the *Britains*, to assist him against the prevailing Forces of the *Scots* and *Picts*: Nor did *Hengist* take the Title of King of *Kent*, till Six Years after his Arrival in *England*, and when he had fully conquer'd all *Kent* from the *Britains*, as the *Saxon Chronicles*, under the Year Four Hundred Ninety Five, relate; which I think is a sufficient Proof alone, that he was at first no King, but only (together with his Brother) the General or Leader of an Army of Volunteers. The like I may say of every one of those other *Saxon* Princes, whose Names are particularly mention'd in *Bede*, the *Saxon Annals*, and other Ancient Histories, and Monuments of Antiquity, and who gave Beginning to the *English Saxon* Heptarchy: They were none of them Kings over their own Nation, but came hither with their Followers to seek new Habitations, their own Countries in *Germany* being too narrow to contain them.

But I shall speak more particularly of the Beginning of the Kingdom of the *West-Saxons* under *Cerdic*, and his Son *Centrick*, because it is from them our present Kings derive their Pedigree. Now these came out of that Side of *Germany* which was called *Ancient Saxony*; and this contain'd not only that Part which was inhabited by the *Angles*, (from whom is deriv'd the Name of *Englishmen*) but all that Region that is now call'd the *Lower-Saxony* at this Day: And that they were not Kings before their Arrival here, is very certain. For the same *Saxon Annals* tell us, that it was not until the Year Five Hundred and Nineteen, that the Two Princes last mentioned, took upon them the Title of Kings, which was above Twenty Years after

after their Arrival; and when they had fully subdu'd these Countries, which were afterwards call'd the *West-Saxon* Kingdom. Now the only Question that remains to be decided, is, whether these Generals of Armies, by their own Supreme Power, made themselves Kings, or whether they were Elected to that Office by the unanimous Votes and Suffrages of their Chief Officers and Soldiers?

Now this Writer, and others of his Stamp, who are for making these Princes Absolute Monarchs, will needs suppose that they took this Title of *King* by their own sole Power and Authority, without any express Consent or Election of the People, whom they either first of all brought over with them, or that came over afterwards to their Assistance; but these Gentlemen would do well to consider, what may be alledg'd against them. As first, That there were no such Things as Absolute Monarchs in *Germany*, the Country from whence they came; and consequently those Princes could not set up a Government, to which they themselves, as well as their People, were absolute Strangers. 2dly, It was, if not impossible, yet very improbable, that they should presume to make themselves Kings, without the express Consent of their Chief Officers and Followers, among whom, upon their Conquest of those *Western* Countries, they distributed divers Parcels of Land, that they might be Sharers of their good Success, as well as they had been Partakers of their Dangers: And therefore it is no ways probable, that contrary to the Genius of their Nation, they should ever, without their own Consents, submit themselves to the Absolute Dominion of one or two Persons, who had before no Power, but what they receiv'd from them who had chosen to follow them; not as Kings, but only as Leaders in that Expedition, when they left their Old, to seek New Habitations. So that since they were thus elected by their People, or Followers; all the Question that remains to be decided must be, Whether they, who thus elected them, were to be call'd *Lords* or *Commons*? Certainly not the former, because the Title of *Thane* (which was indeed, in After-Ages, the same with Baron) could not be then in Use. So that it is plain, all that join'd in their Election, must do it only as they were Free Men, without any other Difference or Distinction, than what their Military Offices or Commands might have bestow'd upon them; and it was out of these, that our first *English-Saxon*

Kings

Kings chose their Great Council of *Wites*, or Wise Men, who thereupon became the Great Council, or Estates, afterwards call'd *Wittena-Gemot* or *Mickle-gemote*, which must have been establish'd at the same Time with Kingship under the *Saxon* Heptarchy; since we find them to have been alike instituted in all of them by their Original Constitution: And they were those who oftentimes chose their Kings, and likewise judg'd on whom the Crown should descend, in any Case where the Succession was doubtful. And this may be prov'd by divers Instances from our *English-Saxon* Chronicles, which were the Histories of those Times. And it is from this inherent Authority, that our Assembly of Estates, consisting of Lords and Commons at this Day, are likewise invested with the same Power, in all Disputes about the Succession of the Crown, to judge who has the most just Right to it. And this Writer himself is so far willing to confess this, that in the Treatise it self he owns, the "House of Lords to have declar'd, Page 38.

"upon a full Hearing of the Pretensions of
 "both Parties, That the Duke of *York's* Title could not be
 "defeated; and *Henry* the VIth join'd in the Determina-
 "tion of the Lords, That the Duke of *York's* Title was
 "just, Lawful, and True. And tho' he, and the rest of
 his Party, may think fit to conceal it; yet it is plain, that
 not only the Lords, but also the Commons, were then
 looked upon as competent Judges of this Duke's Title; since
 this Sentence of the Lords was passed into an Act of Par-
 liament, to which the Commons, as well as the King, then
 gave their joint Assents. But how far that Act ought to be
 accounted valid in Law, shall be further consider'd by and
 by, when I come more particularly to treat upon that Sub-
 ject. So likewise, when at any Time the Throne became
 vacant, the same Assembly often nominated and declared,
 who was most fit to fill it, as I could prove from several In-
 stances before the reputed Conquest, and after it also; tho'
 I need go no higher than the Three First *Norman* Kings,
 who had no *Hereditary* Title to the Crown by Blood; and
 therefore cou'd have none at all, but what unjust Force
 might bestow, unless that which the Assembly of the Estates
 conferr'd, by *electing* them to be Kings after the Decease of
 their Predecessors.

The like may be prov'd concerning some others, as King
John, *Henry* III. and *Henry* IV. the last of whom, tho' he
 claim'd

claim'd as Heir by Hereditary Right, yet was not really so; however he was not contradicted, nor was any ways confirm'd as such, by the Two Houses of Parliament, when they owned him for their King; as any one, that will but take the pains to peruse the Rolls of that Parliament of 1 *Henry IV.* as also our *Latin* Historians, may easily satisfy himself; and therefore, after this true stating of the Original of Kingship among the *English-Saxons*, it is easy to give an Account how, when those Kings came to be chosen by their People, they then gave some of them the Titles of *Aldermen* and *Thanes*, which were afterwards the same with Earls and Barons after the pretended Conquest; which last was certainly the most Ancient, as well as the first Dignity, hereditarily belonging to their several Estates and Tenures: Whereas that of *Alderman* (afterwards stiled Earl) was not primarily Hereditary, but only an Office for Life, as the Superior Judge in the County-Court under the King; and whose Deputy, still call'd the Sheriff (in *Latin*, *Vice-comes*) sat, with certain Assessors, to determine all Causes, both Civil and Criminal, in his Absence. And therefore to argue, as this Writer does, That the first Kings could not derive their Power from the People, because the *Commons* had then no Representatives in Parliament; and that the Titles of Dukes, Earls, and Barons, were not then in Use (because they afterwards deriv'd their Original from the Grants and Concessions of succeeding Kings) proceeds from his gross Ignorance of the Ancient *English* Constitution; and is a way of arguing altogether as absurd, as if a *Danish*, *Suedish*, or *Polish* Author should go about to maintain, in a Treatise concerning the Ancient Constitution of their Governments, That the Nobility and People of those Kingdoms did not at first elect their Kings, because they alone are invested with the Prerogative of Creating Counts and Barons at this Day; whereas it is very certain, that those Titles were begun many Ages after their Original Constitution.

Page 2. As for what he says in the last Paragraph of that Page, "That we shall find, that the
" Clergy form'd one of the States of the
" Kingdom, and were call'd to consult in Cases of Emer-
" gency, when a House of Commons had no Being.

This Assertion, if it be understood of the Inferior Clergy, as I suppose he intends it, consisting of the Deans and Proctors

Proctors of Cathedral Churches, together with those of the Parochial Clergy, is a great Mistake; for if he had but carefully perused that Elaborate Volume of the Learned Dr. Wake, now his Grace the Lord Archbishop of *Canterbury*, containing a History of Ecclesiastical Synods and Convocations, he might there have been fully satisfy'd, that those Representatives of the Clergy, formerly call'd *Procuratores Cleri*, were never reckon'd as a Part of the Third Estate in Parliament, till the 23d of *Edward I.* when they were summon'd to Parliament by Virtue of that Clause inserted in the Writs of Summons to the Bishops, commonly stiled *Premunientes*, &c. But when they so appear'd in Parliamentary Convocations, it was chiefly to supply the Crown with Money, as often as Occasions requir'd: And that was the *only Case of Emergency*, in which I find they were consulted. For as to giving the King any Advice in Civil Matters, or their ever giving their Consent with the Commons, in passing any Bills into Acts of Parliament, we can find no Precedent of it in any Parliamentary Records, or Histories of those Times. But whatever their Business then was, it is certain, that they have nothing to do in Parliament at this Day, since the inferior Clergy have left off being summon'd thither, ever since the latter End of *Henry VII.* or Beginning of King *Henry the VIIIth's* Reigns. 'Tis true indeed, that the Bishops, and those Abbots who held of the King in *Capite*, had been always summon'd to Parliament, as well before, as after the Conquest; but then it may very well be question'd, how they could properly represent the whole Clergy of *England*, who never gave them any Authority so to do. And as for the Abbots, it is certain, that they could represent no body but themselves; since their Monks being look'd upon as dead in Law, needed no body to represent them.

As to what he says in the next Paragraph,

" That it was no Characteristick of the Su- *Ibid. p. 111.*
 " preme Power of the Commons, that they
 " were liable to be prosecuted for Offences committed du-
 " ring the Session of Parliament, because that in the 1st
 " and 2d of *Philip* and *Mary*, 39 Members of that House
 " were prosecuted by Indictment in the *King's-Bench*, for
 " departing without License from Parliament, in Defiance
 " of the King's Prohibition.

I shall not dispute the Truth of the Precedent, as he has there cited it from the Lord Coke's 4th *Institutes*; but had he shew'd himself a fair Writer, he ought to have told us the whole Issue of that Process, which you may find to have been thus, from the Author above-cited: For tho' some of those Members being frighted, did voluntarily submit to compound, and pay a Fine for their suppos'd Absence; yet it is very certain, that as to most of them, this Process signify'd nothing; since after the Dissolution of the Parliament, there could be no due Evidence given of their Absence; for the Journals of the House of Commons being no Matter of Record, could not be given in Evidence against them. And as for their Fellow-Members, they ought not to have been examin'd, since after the Parliament was once dissolv'd, they were no competent Witnesses who were present, or who were absent from the House; because it was impossible for them to swear to the direct Days, when they left it, or when they appear'd in it. And therefore this

Writer himself informs us, " That *Edmund*
Id. p. 1. " *Plowden* (the great Lawyer) who was

" in the Information, pleaded, that he was
 " present in that Parliament, in which it was alledg'd that
 " he was absent. And certainly not only he, but any
 other so accus'd, might have made the same Plea; since it
 was then impossible to prove a Negative, that they were
 not present, when once the Parliament was dissolv'd.

As for what he says concerning Sir *Edward Coke's* Observation upon this Matter, viz. " You may observe, that the
 " poor Commons, Members of Parliament in *Diebus illis*,
 " had no great Joy to continue in Parliament: By this (if
 cited fairly) it would have appear'd, that Sir *Edward* made
 use of that Precedent, not as an Instance to confirm, but to
 avoid the King's Prerogative in that Case: For he mentions
 it as an Instance that had never been practis'd before, and
 was never in use since that Time, to inform against any
 Members for their suppos'd Absence from Parliament.
 And therefore 'tis very well observ'd of that Learned Author,
 That the poor Commons in *Diebus illis*, had no great
 Joy to continue in Parliament; i. e. in those evil Days,
 when a Popish King and Queen, being influenc'd by an Arbitrary
 Ministry of the same Principles, were prevail'd upon
 to stretch their Prerogative further than had been done in the
 Time of their Predecessors, for Matters that were transacted
 in Parliament after it was dissolv'd.

As

As for his Observation from Sir *Robert Filmer*, that Parliaments in Antient Times were maintain'd by the King, and fed at his Table, he would have done well to have cited that particular Record, or History from whence that Gentleman borrow'd this Passage: For otherwise, I may as freely deny his Authority, as I may do that of this Writer, since the one is no more to be depended upon than the other; because I think I may with good Assurance assert, that they are both alike mistaken: For if by Parliaments he would include both Houses, he cannot but be sensible, that the Bishops and Peers of *England* never ow'd their Maintenance to the King during their Session in Parliament; and as for the House of Commons, it is likewise false in respect of them; for in those Days both the Knights and Burgeses, who received Wages from those that chose them, needed not to be maintain'd by the King: And as *for being fed at his Table*, if the Members of Parliament were invited to dine with the Officers of his Household (as no doubt they often were) that could not make them have a Dependance upon the Court for their Diet, any more than in our own Times, when we have known the like Invitations to have been made to such Members of Parliament as have commonly voted for the King's Interest. But as for any other Maintenance by secret Bribes and Pensions, as they were Things unknown in former Ages, so it had been happy for this Nation, if those Corruptions had never been continued by a certain Arbitrary Ministry, which consulted the King's private Interest and Profit, above that of the Religion and Civil Liberties of the Nation.

As to what he further adds to prove, that Dependency of the House of Commons not only on the King, but on the Lords likewise, by a Quotation from that old Whig, Mr. *H. Nevil*, out of his *Ibid.* p. 4. *Plato Redivivus*, concerning the mean Account of the House of Commons Original, "Because in some former Reigns, he says, most of the Members thought it an Honour to retain to some great Lord, and to wear his Blue Coat; and when they had made up their Lord's Train, and waited upon him from his own House to the Lord's House, &c. the rest need not be repeated.

Now supposing this Matter of Fact to have been true, that some of the meaner Sort of Gentry were often chosen Knights of Shires; for as for the Burgesses, they were till the latter End of the Reign of *Henry the VIIIth*, mostly chosen out of the Richer Sort of Burgesses, and Tradesmen of little Corporations and Boroughs, and so might pay some of those great Lords on which they depended by way of Tenure, or other Respects, a great deal of Reverence: Yet it does not from thence necessarily follow, but that those Members, when they came into their own House, gave the King what Subsidies they pleas'd, and passed what Bills they thought fit, without being any ways influenced by those Lords; since we often find in the Records, and most Ancient Journals of Parliament, that they often refus'd those Bills which the Lords sent down to them: And it has been a known Privilege of the House of Commons, Time out of Mind, that all Bills for the granting of Subsidies, or any other Pecuniary Aids, have always been brought into the House of Commons, and then sent up to the House of Lords, who can alter nothing in those Bills, but must either pass or refuse the whole; and if this be a Sign of their Dependance on the Lords, I will leave any indifferent Person to judge. But this Writer deals with the *Old Whig* above-mentioned, as he does by all other Authors he has occasion to cite, only transcribes what he thinks makes for him, and leaves out whatever makes against his Opinion; for had he fairly dealt with that Gentleman's Treatise, he should have told us, that he there maintains the Right and Antiquity of the Assembly of Estates, or Parliaments, not only here in *England*, but in all other Kingdoms of the *Gothick Model*, as he there styles them.

Id. Ibid.

But this Writer is indeed somewhat more civil to the House of Peers, "The Antiquity of which he grants is beyond Dispute; and says, that the *Saxon* Kings in their Laws, mention them by the Name of *Sapientum & Magnatum Concilium*; but as to any real Authority, (he says) I cannot see that they enjoy'd the least Shadow thereof.

I can-

I cannot but admire at his Ignorance, which plainly shews that he never has read those learned Collections of Mr. *Lambert*, and Sir *Henry Spelman*, of the *English Saxon Laws*, where he might have found by the very Titles of them, that they are said to be made with the Advice and Consent of the *Bishops, Aldermen, Dukes, or Thanes*: And the Kings of *Kent* were so limited in their Power, that when King *Baldrid* had given the Mannor of *Malings* in *Sussex*, to *Christ-Church* in *Canterbury*; “ Yet because the Lords consented not thereto, it was revoked, and King *Egbert* afterwards made a new Grant, by Advice of the Lords; “ which shews that the *Demefnes* of the Crown were then held *Sacred*, and could not be dispos’d of to any other Use, though Pious, without the Consent of the Estates. But I shall give higher Instances of their Authority by and by.

Vid. *Spel.*
Cmtil. Ang.
Vol. 1. ad
An. 936.

However, notwithstanding this Concession concerning the Antiquity of the Great Council or Nobility under the *Saxons*, yet he now dates our Constitution from *William the Conqueror*: “ From him (says he) we received our Laws, and Model of Government. This is partly true, and partly false; for the *Feudal Laws* had been in great part introduc’d by King *Knute* and his Successors of the *Danish Race*, and were afterwards more fully settled by this Prince, when he had distributed so great a Share of the Kingdom among his *Norman* Noblemen, and others his Followers in that Expedition: And if that shew’d him to be a Conqueror, he exerted the same Power likewise over the Clergy, when he made all the Bishops, and some of the greater Abbots, to hold their Temporalities by Baronage, or Knights-Service, which had been held under his Predecessors by *Frank-Almoigne*. But as for other new Laws, he indeed confirm’d those Ancient ones of *Edward the Confessor*, with some Alterations and Additions of his own, but then they were likewise confirm’d by the great or common Council of the Kingdom, as may appear by the Citations in the *Margin*, which the Reader may consult at his Leisure.

I come

I come now to the Second Part of this Paragraph, wherein he betrays his own Ignorance as much, if not more than in the former: For if the bequeathing of the

Ibid. p. 5. Crown by Will, made the Kingdom a perfect Property, then it was certainly so under the

English-Saxon Kings, divers Ages before the Conquest, as may be made clear by many Examples. And I would ask this Man of Confidence, what Right *William* the First had to the Crown of *England*, besides the Sword, which could give no Title to a Crown, if the War was unjust; as it must have been, had it not been bequeath'd by *Edward the Confessor*, to *William* Duke of *Normandy* his Cousin; which Will (as the Author of the *Hereditary Right* acknowledges) was solemnly confirm'd by the Consent of the Estates, or Great Council of the Kingdom. And this shews, that the Writers of that Time did not think it sufficient without it; and therefore it was no Wonder if King *William* the First took upon him the like Prerogative, as King *Edward* had done before; who, by that Will, excluded *Edgar Etheling* his Nephew, and next Heir by Blood, as King *William* did *Robert* his Eldest Son. But whereas he tells

Ibid. us, That this was done without any Intervention of the Estates; he therein contradicts almost all our Ancient Historians, who relate, That *William Rufus* did not bring over with him any direct Will or Testament of his Father's, but only a Recommendary Epistle to Archbishop *Lanfranc*, and the rest of the Nobility; wherein he desired them, That since he had named his Son, *William* for his Successor, they would also confirm it by their Choice: Which *Matthew Paris* and *Brompton's Chronicle*, do both expressly say, That after a long Consultation, most of the great Men of the Kingdom, being assembled, agreed to make or elect *William Rufus* their King.

And as for what follows, That his Title was never questioned by the People, it is directly contrary to what all the Historians say of it; for Duke *Robert*, his Elder Brother, being very much displeas'd at their thus setting him aside, immediately laid Claim to the Crown, and was therein assisted by *Odo* Bishop of *Bayeux*, and Earl of *Kent*, and *Robert Mortain*, and others of the *Norman* Nobility; and if King *William's* Title had not been supported by Archbishop *Lanfranc*, and the other Nobility, as well *Normans* as *Englishmen*, he might have been depriv'd of the Crown.

But

But Duke *Robert* not coming over in due Time, those of his Party were fain to confess their Fault, and beg Pardon for their Rebellion, though with the Loss of their Estates.

And what follows is likewise as false, that till very lately the Crown was never enjoy'd by any Popular Election; and that the Usurpers that thrust themselves into the Throne, always had the Pretence of *Hereditary Right*. Now if he means an Hereditary Right by Blood, there is nothing more contrary to Matter of Fact; for what Right had King *Knut* and his Two Sons, of the *Danish* Race, unless by Conquest, and the after Recognition and Submission of the Subjects? And what Right had *Edward the Confessor* himself to the Crown (his Elder Brother's Son being then alive) but what he obtain'd by the Major Votes of the Nobility, who had been brought over to his Interest by Earl *Godwin*? Or what Right had *Henry* the First to succeed to *William Rufus*, whilst his Brother Earl *Robert* was yet alive, but by the like Election? And this was likewise carried on in the next Reign, when they chose *Stephen* Earl of *Mortain* for their King, notwithstanding the Oath of Fealty they had before taken to *Matilda* the Empress, only Daughter to King *Henry* the First; and we do not find but they were all of them obey'd as lawful Kings, during the whole Time of their Reign, unless it were some Rebel Lords, that took up Arms against her, notwithstanding the Homage they had done, and the Oaths of Fealty they had sworn to him, which in those Days was the same with them, as an Oath of Allegiance is with us now: And the Breach of which has been likewise imitated by too many who were in the late Rebellion against his Present Majesty.

But perhaps this Writer may (like the Author of the *Hereditary Right*, &c.) strive to evade these so evident Instances, by pretending, That those Kings that succeeded to the Crown by *Will*, succeeded to it by an *Hereditary Right*; because by the Civil Law, he that succeeds by *Will*, is counted to have as much an Hereditary Right, as if he succeeded by Right of Blood: And in this Sense it was, that Duke *William* claim'd the Crown *Jure Hereditario*, as Heir by Testament to his Cousin King *Edward*.

In Answer, I need only observe, that this is a direct Change of the Terms of the Question, which the Author of the *Hereditary Right*, in all the following Part
of

of his Book would needs persuade us to have been an indefeasible *Hereditary Right by Blood*; and that notwithstanding any Will or Testament of a King made to the contrary; For otherwise, why should not the next Heirs of the House of *Suffolk* have succeeded to the Crown, after the Death of *Queen Elizabeth*, and not the King of *Scots*? Since the Crown was entail'd by King *Henry* the VIIIth's Will, confirm'd by Act of Parliament, upon the Issue of *Mary* Queen Dowager of *France*, (from whom the Earl of *Hartford* was descended) before the Issue of *Margaret* Queen of *Scots*, Great-Grandmother to King *James* the 1st. And so likewise should *Jane Grey* have succeeded to King *Edward* the VIth, since the Crown was bequeath'd to her by his last Will, under the Great Seal of *England*. But if they will say, That the Succession of the Crown has been since alter'd by some former Law or Custom, I desire they would shew us that Law. And as for Custom, if King *William* the 1st made the Crown his *perfect Property* (as this pretended Vindicator of the old Constitution says) I then desire to know, why it is not as much a *Property* still, if the King at present ought to be as absolute a Monarch as the Conqueror himself; since it is a known Maxim in Law, *nullum tempus occurrit Regi*; i. e. No Time can bar the King's Prerogative?

But if he should still urge further, That by the *Election of the People*, he means that of any Number of Persons met in the House of Commons, (which I suppose he aims at in Reflection upon his Present Majesty's Parliamentary Title to the Crown) but that in ancient Time, when those suppos'd Elections were made, it was done by the Bishops, Earls and Barons, without any Consent or Vote of a House of Commons. In answer to this, I shall only leave him to be better instructed by his late Friend Dr. *Brady*, who in the *Preface* to his History, as well as in the Body of the Book it self, has endeavour'd to prove, that by the Terms *Clerus & Populus*, so often made use of by our ancient *Latin* Historians, although the Commons, in the Sense they are now taken, were not to be understood by the Word *Populus*, but only the Earls, Barons, and Tenants *in Capite*, who being then the sole Representatives of the People or Nation, are to be understood by that Word *Populus*, the People: Now if these Tenants *in Capite* (as I have already prov'd) were not Lords or Peers of the Kingdom, but meer Commoners, then

then it will follow, that the Estates of the Kingdom at that Time really consisted of Bishops, Peers, and Commons (sitting together in one House) were as much the Representatives of the People of *England*, as they are now under the like Words of Bishops, Lords, and Commons, though sitting in Two several Houses, and consequently they have too the same Right of confirming the Bequest of the Crown, by any Will or Testament, either of a living or deceas'd King, as they had then, and so likewise of judging and determining all different Claims or Titles to the Succession of it: And also of supplying any Vacancy of the Throne, whenever it happens, as well as they could upon the Death of any of the Princes above-mentioned; to whom I may likewise add King *John*, and *Henry* the III^d his Son, who were both so elected and recognized by the Estates, *i. e.* the People: When the Earl of *Bretaigne*, and his Sister *Eleanor* were alive at the Time of their respective Elections and Recognitions; which was no more the Election of a Multitude, than they are by the same Sort of Persons at this Day.

I hope the Reader will pardon me (and not think it an unreasonable Digression) if I have been something more prolix than ordinary, in the Confutation of this Paragraph, since it contains almost as many Mistakes and Falsities as it does Lines. I will not here have any Dispute with him touching the Error that some Men have been led into, thro' the not settling a right Signification upon Words; and amongst the rest, that the word *King* has been one of them, which has been very much wrested and abused, especially by Men of his perverse Principles; but not so (as he says) that *it has set this Nation together by the Ears, from the very Time that the Word has been known within the Realm, because we have not adjusted our Idea with the Word.* Now it is very strange, that so plain a Term should not be understood, after so long a Time, either by written Laws or Customs: But as for his Definition of a King, *viz.* That he is *One that has the Supreme Power of the Nation*: Though I should in Part agree with him in it, yet the Question would remain still undecided for all that; because he may be the Supreme, and yet not the sole Supreme Power. But if he thinks fit to *reduce it into a very narrow Compass*, by supposing the King to be such a *Supreme Power as cannot*, upon

Ibid. p. 61

on any Account whatsoever, *be resisted*; and that if the *Supreme Power may be resisted, consequently any inferior Power may be resisted in Society: And therefore, no Magistrates are secur'd from having their Brains regularly knock'd out by the People.*

In Answer to this, I need only deny the Consequences he draws from thence; and therefore for the Reader's better Satisfaction, I shall put *the Case of Resistance*, as I maintain it, into the Form of an Hypothetical Syllogism, thus; If the King be not endued with an irresistible Power to make War upon, and to destroy the Liberties and Properties of his Subjects whenever he pleaseth, or by impulse of evil Counsellors, shall be moved so to do, the People may then take the Liberty to rise up in Arms against him, and knock out his Brains. But the King has such a supreme irresistible Power, as is above-said; therefore the People ought not, upon any Account whatsoever to resist him, or the Forces he shall raise to make War upon, and destroy them.

Now I desire to know, which of these Propositions this Vindicator will undertake to maintain: If he would prove (as I suppose he must do) the Consequence of the Major, he must do it by the following Syllogism: If the People may judge in any Point, about their own Preservation, in Opposition to the King's Edicts, or irregular Actions, be they what they will, they may chance some Time or other to judge amiss, and fancy and believe the King intends to make War upon them, or to destroy them in manner above-said, when in Truth he does not intend any such Thing; and therefore they may rebel against or depose their Sovereign, when probably he meant them no Mischief at all: And the only Argument by which he can prove it, is, That several whole Bodies of Subjects, under Pretence of Self-Defence and Preservation, have rebelled against, and deposed their Innocent Sovereigns: And for Proof of this, he may alledge the known Examples of *Edward II. Richard II.* and also of King *Charles I.* who, as it was then declared by the Parliament, set up his Standard, and went about to make War upon, and destroy his People; and therefore they were oblig'd to raise such a powerful Body of the Nobility, Gentry, and People of this Nation, as they thought sufficient to resist him and his Forces; and the Parliament having, by their prevailing Troops several Times, routed the King's

King's Armies, at last they reduc'd his Person under their Power, and first made him a Prisoner, and afterwards publicly Murder'd him: all which Proceedings sprang from this Doctrine of Resistance of the Higher Powers in any Case whatsoever. Whereas if it had never been taught, either before or after the *Reformation*, by Papists or Protestants, those Kings might have liv'd and dy'd in Peace, and those cruel civil Wars, and dismal *Revolutions*, might have been avoided. The like is also said, with respect to the Resistance made against King *James the II*d, and his Forces at the *Revolution*, which with the unexpected *Desertion* of many of his own Troops, was the only Cause of his quitting the Kingdom as he did.

Having, I think, fairly represented the utmost that can be urged in Defence of the Consequence of the Major Proposition, I shall now return as satisfactory an Answer to it as I can: And in the first Place I must take Notice, that a King has either a Power given him from God, so to make War upon, and destroy his Subjects, or he has not: I suppose neither this Man, nor any one else will say, that God ever gave a King any such Power to destroy his People, but that it is a manifest Abuse of, and acting in open Contradiction to it.

The only Question then that remains is, Whether or no this notorious Abuse of the Power, can discharge the Subjects from all Obligations of Obedience to such a Sovereign; and that it will do so, I have already prov'd. For if Fathers of Families, (who were the Original of all Civil Government) may be resisted by their Children, or Servants, when through Excess of Drink, Phrensy, or immoderate Passion, they should go about to take away their Lives, or by Force to make them become instead of Children, or hired Servants, absolute Slaves; if the Members of each private Family have this Power of Self-Defence reserved to them, of their Lives and Liberties in the State of Nature, surely Fathers and Masters of Families themselves, ought to have the like, if not a higher Right of Self-Defence against such extream Tyranny, as is above express'd.

For since (as I have already said) they first enter'd into Civil Government by *Compact*, for the mutual Security of themselves and each other, against all Foreign and Dome-

stick Enemies, they did put this Power into the Hands of the Civil Magistrate, or Sovereign, not to give him any absolute or arbitrary Power over their Lives, Liberties and Estates, but only as a Chief Officer entrusted with it, for the Ends aforesaid, and never intended to divest themselves of this Power of judging about their own Safety and Preservation; for when they are thus outrageously assaulted, they are then reduc'd to their primitive State of Nature, in which a whole People or Nation must always be Judges, or otherwise there could be no Right of Self-Defence at all left to any Man in the State of Nature; and therefore in such Case there being no Superior Judge appointed by God between them, such Violence and Outrage can no other ways be decided but by the Sword; in which Contest, if the Prince should happen to get the better, in all Probability he would either destroy that People, or reduce them to absolute Slavery, which yet can give him no Right over them by the Law of Nature, because the Force was from the Beginning Tyrannical and unjust.

So likewise, if the People, or Subjects, should prevail and get the better of the Prince, they having been already discharg'd of all Obligation to him as Subjects, when they thus enter'd into a State of War against him, they may either destroy him in Battel, or expel him the Country if he escape with Life: For as to calling him to an Account, and punishing him as his Superiors, that can at no Time be done, but by some Superior Power suppos'd to be left in the People so to do, which is impossible, because all Civil Power, or Government, is then dissolv'd.

But as for the Second Part of the Argument, that if the People may judge when they are thus outraged, they may perhaps judge amiss, and imagine the Prince designs to destroy them, when in Truth and Reality he has no such wicked Intention; that can hardly ever be suppos'd to happen, because the major Part of the People, or Subjects, so long as they are tolerably protected and secur'd in the Enjoyment of their Lives, Liberties and Estates, can scarce ever be tempted to enter into a State of War with their Prince, and to venture the Loss of all that is dear to them, so long as they may enjoy them in any tolerable Condition, although the Government may
be

be exercis'd, with Relation to some particular Persons, as to their Lives and Liberties, with some unjustifiable Cruelty and Power; nay, also upon the main Body of the People, with the greatest Oppression and Severity, in point of Taxes, and other Contributions, as we see is exercis'd in several absolute Governments in *Europe*, and elsewhere, at this Day.

But supposing the worst that can happen, and that this Right of judging may chance to be sometimes abus'd; yet this ought not to take away the Peoples Right of judging for themselves in such cases of Extremity as are above-mention'd. For if an Abuse of a Right by some particular Persons, ought not to destroy the Rights of all others, because in the State of Nature, that Right may be abus'd upon frivolous Pretences, as when a Man, upon Pretence that another Person would assault or kill him, shall therefore, by way of Prevention, fall upon him first, and take away his Life; so in Civil Governments, where the like Cases may happen, in which the People may, or have judg'd amiss, this ought not to take away that Right of judging for themselves in all others that do not so abuse it. For since Civil Government was appointed by God for the Good and Preservation of Mankind in general, and for the Subjects of that Nation in particular, which have been thus united under a Civil Sovereign; so when the Ends of Civil Government are no longer prosecuted and preserv'd, the only Question to be decided, is, whether a whole Nation should be left to be destroy'd, or enslav'd, by the boundless, arbitrary Will and Ambition of one Man; or that such a Person thus abusing this Supreme Power in the Manner as above set forth, may not be resisted by the People, as being against the Law of Nature, and therefore void and null in itself; and whoever judges otherwise, must suppose that God, when he ordain'd Civil Government, preferr'd the unjust and arbitrary Power of one Single Person, and his Family, before the Happiness or Preservation of a whole Kingdom or Nation.

But since I am sensible that Mr. *Lesley*, and others of his Opinion, being convinc'd of the Absurdity of this Consequence that will necessarily follow from granting such an arbitrary Exercise of this extravagant Power, they therefore utterly deny that ever it was, or can be so abused, either
to

to the total Destruction of a People, or reducing them to entire Slavery; because all Princes are sensible, that their greatest Safety and Riches depend upon the Numbers and Happiness of their People, as their chiefest Support; and therefore instead of destroying, will always protect and defend them:

As to this, I confess, the Answer seems plausible, and such a Tyrannical Arbitrary Power seldom is exercis'd in so high a Degree; but that such Actions have been done, we have not only the Testimony of the Holy Scriptures, but of Prophane History, to justify us: For we need go no further than the Children of *Israel* in *Egypt* for an Instance; which People coming thither at first, as free Denizens and Subjects; but increasing, after some Generations, to a great Multitude, the King of *Egypt* began to grow jealous of their Numbers; and not being able to destroy them all at once, endeavour'd to lessen them by degrees, not only by putting a severe Servitude upon them, but by ordering all their Male Children to be destroy'd as soon as-born; which being done by Force, and contrary to the Ends of all Civil Government, upon a People naturally free, they might have vindicated their Liberty, and preserv'd themselves, when grievously oppressed, and under Saws and Harrows of Iron, and passing thro' the Brick-kilns; even by their own Power or Force, (if they had been able so to do) whether God had engaged himself in their Quarrel, or not. And so likewise we read in the Book of *Esther*, That King *Ahasuerus*, by the cunning Insinuation of his Favourite *Haman*, issued out his Edict for the Destruction of the whole Nation of the *Jews*, consisting, in all probability, of above a Million of People.

This is another Instance, that a King may go about to make War upon, and destroy his innocent Subjects without any just Cause: And if he might have exercis'd this Arbitrary Power upon them, he might likewise have done the same upon the People of any entire Province of his Empire. And I will not scruple to affirm, That the *Jews* might, in that Case, have defended themselves against all that should have gone about to fall upon them, and to take away their Lives or Estates; whether the King had recall'd that Edict for their Destruction or not, and given them Power to defend themselves. I am the more confirm'd in this Opinion, because many Ages after, when *Antiochus Epiphanes*, who
was

was Absolute Sovereign over the High-Priest and whole Nation of the *Jews*, endeavour'd, by Persecution, and putting all Sorts of People to Death with cruel Torments, to make them abjure the Law of *Moses*, and sacrifice to Idols; and having a traiterous High-Priest, who gave up the Rights and Liberties of the Nation on his Side, he carried on his Design without any Opposition, till such Time as *Mattathias*, of a Priestly Family, made some Resistance against it, which was afterwards carried on by his Son *Judas* (Surnamed *Maccabeus*) and the rest of his Brethren, till at last they not only set themselves free from that Tyrannical Yoke, but also establish'd, first, the Priesthood; and after that, the Supreme Power of the Nation in their own Families, tho' they were not the Eldest Family from *Aaron*; and that for above Two Hundred Years, till such Time as *Hircanus*, the last lawful King and High-Priest of that Family, being subdued by *Pompey*, not only he, but the whole Nation were reduced under the *Roman* Yoke. And though we do not find any Divine Warrant for this vigorous Resistance of *Antiochus*, and divers of his Successors; yet by the miraculous Deliverances and wonderful Victories obtain'd by the said *Judas*, and his Three Brethren successively, (as we find recorded in the Two Books of the *Maccabees*, and also in *Josephus's* History of the *Jews*,) I know none (even of our Divines) who doubt, but that the Resistance then made against those Sovereign Powers, was approv'd of, by being brought to a happy Issue, not only by God's Permission, but also by his approving or directive Will, for the Preservation of his own Church, and Reveal'd Religion, at that Time confin'd within the Bounds of that particular Nation and People of the *Jews*, whose Religion and Liberties would have been utterly destroy'd and abolish'd, not only in *Judea*, but throughout the whole *Syrian* Empire, had not a sudden and unexpected Turn and Stop been given to it, in the manner above related.

And as I have given these Instances out of Sacred History, so I could also out of that of the *Grecians*, and *Romans*, and Modern Histories, would the short Compass of this Performance allow it. And that a Prince may have a Will, though not a Power, to destroy his People, I need go no further than that Saying of the Emperor *Caius Caligula*, as set down by *Suetonius*, that being angry with the Senate and People of *Rome*, for not complying with some extravagant

gant Humours of his, he wished, *Utinam Populus Romanus unam Cervicem haberet*, i. e. That they had but one Neck, that he might have cut it off. So likewise *Nero* did what he could to put this in Practice, when he sent out his Guards in the Night, to set the City of *Rome* on Fire, who destroy'd a great Part of it, and (no doubt) but too many of the Inhabitants with it.

Now will any body say, (unless a Man of such Principles) these *Boutefeus* might not have been resisted, though they had the Emperor's express Orders for what they did? So likewise we read in *Herodian's* History of the Lives of some of the *Roman* Emperors, that when *Antoninus Caracalla* was making a Progress Royal to *Antioch*, the People that went out to see him, happen'd to scoff and make Jest at the Length of his Beard; at which (being inform'd of it) he was so incens'd, that he commanded his Guards immediately to fall upon the unarm'd Multitude; which they presently did, and destroyed several Thousands of them in the Streets. And, pray, might not the People, who were thus inhumanly butchered without any just Cause, have defended their Lives, had they been able, against such outrageous Violence? But perhaps it may be reply'd, that these were frantick and mad Emperors, and therefore will conclude nothing against those that are not so: To this I may return, That seeing it is only from such-like evident Tokens as these, that Men can judge of their Qualifications for Government; whenever such cruel Orders are executed, both the Person that commands them, may very well be counted out of his Wits; and those that obey them, must have blindly given up their Natural Reason and Humanity to the Absolute Will of one Man. For otherwise such a furious Monarch could do very little Mischief in his own Person, because he could only murder a few that were about him. And if a Prince that is really mad by Reason of a Disease, may be resisted, I desire my Friend to tell me, whether the like unreasonable and savage Temper, let it proceed from what Cause it will, (either from a natural Indisposition of Mind, or an immoderate and sudden Passion) may not be treated in the same manner?

But since perhaps it will be further objected, That this only extends to such Arbitrary Monarchs, who thus wickedly employ their Power of Life and Death over their Subjects, but is no Answer to the Abuse of that known Right

of Resistance by the greater Part of the Nobility and People of *England* towards *Edward* and *Richard* the II^d. their undoubted Sovereigns; because it cannot be laid to their Charge, that they thus went about to destroy their Subjects, and deprive them of their Lives, or make them Slaves; the Crimes imputed to them being only, that they had broken divers Laws concerning some Rights and Liberties of the People, and went about to make themselves Absolute Princes, without depending any more upon Parliaments. Now seeing all those Liberties and Privileges, and even Parliaments themselves, were originally deriv'd from the Crown; if at any Time the King shall find those Rights and Privileges, at first so granted for the Ease and Happiness of his People, to be turned not only to his own apparent Prejudice, but to that of the whole Civil Society or Commonwealth, and contrary to that great Trust repos'd in the House of Commons, of supplying him with Money, whenever their Defence, or other necessary Occasions shall require it; and if, when often called upon by the King for it, they will, thro' the Persuasions of a Malecontented Party, deny to supply him; in that Case certainly the King, who is the Supreme Power, and entrusted with the Protection of his People (these Gentlemen will say) may very well justify the reassuming those Liberties and Privileges, he finds thus to be abused to the Damage and weakning of his Regal Authority; for otherwise he cannot sufficiently provide, in Cases of urgent Necessity, for the publick Service and Defence, against his Foreign or Domestick Enemies.

In Answer to this Objection, which I have put as full as I can, I must here again say, that it is only a *Petitio Principij*, that the King is the sole Supreme Monarch, and that Parliaments and all our Laws, as they at first proceeded from, so they entirely depend on his Will and Pleasure. This, I confess, is what he, and those of his Principles, do positively assert, and we on the other Side as positively deny: And I think I have here brought sufficient Proofs to make good the contrary. So that the only Question betwixt us to be decided, is, Whether those Privileges and Liberties above-mention'd, that are now a Part of the Constitution, may not be defended, and the Persons that go about by Force totally to take them away from us, may be resisted? And whether we may not oppose those, who declare, that the King is not bound by the Common or Statute Laws and

Customs of the Realm, received for many Ages, and enacted and owned by his Predecessors, being solemnly sworn to the Observance of them, and which are indeed the only Boundaries and Distinction between an Absolute and a Limited Monarch; which once taken away, he might immediately, if he pleased, become as Absolute as the Great *Turk*; and also the Liberties and Properties of the Nation would then be expos'd to his Absolute Will, and the exorbitant Lusts of his Ministers and Favourites that shall govern him? Now, if the People in this Case may not judge, when their Fundamental Rights and Liberties are so grossly invaded, they would be but very precarious, because they were only to be enjoy'd at the Will and Pleasure of another, who might seize, and take them away whenever he thought fit.

For what would signify a Man's Right to an Estate, if he had not likewise a Right to defend it against those, who by Force would ravish it from him? And therefore the same Right that the Subjects, in the most Absolute Monarchies, have, by the Law of Nature, to defend their Lives against the Arbitrary Violence of the Prince; the like Right they must also have in Limited Kingdoms, to defend those Fundamental Privileges and Liberties: For whatever the one may do by the Law of Nature, the other have the same Justice to do, in Virtue of that *Original Compact* and Law, upon and by which the First King was made; which all his Successors claiming under the same, are likewise obliged to observe.

And therefore, for my part, I cannot see any such Case of Necessity like ever to happen, that could make a Prince be forced to levy Money upon his Subjects without their Consent in Parliament. And there can hardly any Case be put, where a King of *England* was first induced by Extremity to take up Arms against his People, that could justify his seizing their Castles, and invading their Liberties and Privileges; since his lawful Authority (and he has no other) is already sufficiently guarded, both by the Common and Statute Laws of this Realm; and no Person can resist his Authority without downright Rebellion, so long as he acts within the Bounds of the Law: Nay, I will go further, and add, that in Cases of the last Necessity, he may in some measure, and for some short Time, be allow'd to transgress them.

Neither

Neither can any new Laws be made, or impos'd upon him without his own Consent, and that freely and openly given in Parliament. And so long as he has the Power of the *Militia* of the Nation in his Hands, which undoubtedly is his just Prerogative, he can never want a sufficient Force to defend himself, and the Nation too, against all Persons here at Home, that should go about to invade his Kingdoms by an unnatural Rebellion.

So that all the Doubt which now remains, is, What a King by his Prerogative may do, in Case of a sudden Invasion by *Foreign Enemies*, when he has not Money sufficient in his *Exchequer* to pay the Fleet or Army he should have occasion to make Use of against them? To this I answer, That in such a Case, he ought first to try whether he can raise Money by borrowing it upon the Credit of a future Parliament, provided he be so straitened in Time, that he has not Opportunity of Summoning one before for that Purpose; and if the Money'd Men of the Nation will not give him Credit, I know not whether he is to be blamed in stretching a little his Prerogative upon such an Exigence, for the good of his People, if he makes use of Force to draw Money from those he is satisfied are well able to furnish him with it; and I question not but it would be repaid them with Thankfulness by the next Parliament, since he was forced to it (as a publick Minister in Trust) for the Preservation of the whole Civil Society.

But I do not say, that the King has by our Laws that absolute Power of being the sole Judge of this Necessity, when perhaps there is in Truth none at all: As for Instance, in the Case of *Ship-Money*, when King *Charles* the 1st, under such a Pretence, did, by his new-claimed Prerogative, impose a Tax upon the Nation for the building of Ships, and setting out a Fleet, at a Time when we had no Wars with any *Foreign State*, but only with the *Turkish* Pyrates in the *Mediterranean*. But if he had been sole Judge of the Necessity, he must then have been also Judge of the Sum that was fit to supply that Necessity. And if at first he took but Six-pence in the Pound, he might advance by Degrees, and by the same Rule of Law, at another Time, have rais'd a Shilling, and so on, till at last it might have reached to the half of every Man's Estate. The same likewise I may say of that later Determination in King *James* the 2d's Reign, of fresh Memory, when

most of the Judges gave their Opinions, that he might dispense with the *Test-Act*, in respect to *Roman-Catholic* Officers, because there was a present Necessity for such a Power for the Defence of the Realm; and the King being then sole Judge of the Necessity he had of the Service of such Persons as were of his own Religion, he took upon him to grant his Dispensations not only for Military Officers, but also for all Sorts and Degrees of Magistrates, and Ministers, both Ecclesiastical and Civil.

So that by this way of Proceeding, within a few Years the King might have fill'd all the Offices and Employments in the Kingdom, Secular and Military, with those of his own Religion only, notwithstanding an express Act of Parliament to the contrary.

Thus having, as I hope, settled the main Point in Dispute, That *Resistance* of the King's arbitrary Power in Cases of Extremity, is absolutely necessary for the Preservation of the *Constitution*; I shall now come to apply it to the Instances already given of the Kings before-mentioned. But as to the Two first of them, *Edward* and *Richard* the II^d, notwithstanding the Vindicator's Censure

of the Parliament's Proceedings against them,
Ibid. p. 12. "as too precipitate, and whose Faults have
 "not been so obvious to every Understand-
 "ing, as to seem to merit such Usage; and that there-
 "fore their Fate makes but a dark Figure in our History;
 "and so much the worse, because the Laws of Nature were
 "violated, and the nearest in Blood were call'd in to fi-
 "nish the Works of Horror.

I need say no more to this, but that though it is not now my Business to set forth all the Miscarriages of those Two Princes, yet their Male-Administrations were then certainly very obvious to the Estates of the Nation assembled in Parliament, or else they would never have passed that Sentence against them as they did. And the Miscarriages of the former perhaps may not be now so plain as they were then, because his Great Grandson, *Richard* the II^d, commanded all the Proceedings relating to him to be taken off the Parliament Rolls: But as for those Articles against the latter, they are still extant upon Record; and if they were true in Matter of Fact, (as is most probable, since they are justified by *Walsingham* and
Knyghton,

Knyghton, Historians that liv'd nearest those Times,) there never was any King before, or since (except one) who came nearer to the Design propos'd, of destroying our *Constitution*, and making himself an absolute Monarch; the Instances of which are too many to be here recited. Yet what he did in the last Three Years of his Reign, is a sufficient Evidence of it, *viz.* his treacherous causing his Uncle, the Duke of *Gloucester*, to be apprehended on the Road, when he had desir'd his Company to *London*; and then immediately hurrying him beyond Sea to *Calais*, he ordered him there to be privately smother'd to Death between Two Feather-Beds, because he had formerly opposed his arbitrary Government, and would likewise have prevented the reversing of all the Acts of Parliament made in the Eleventh Year of his Reign, wherein so many of his Minions and Chief Favourites were attainted and executed, together with the Lord Chief Justice *Tresilian*, (the chief Contriver of the wicked Advice that was given to him at the great Council at *Nottingham*,) and the rest of the Judges who suffer'd Banishment for Life, for joining with him in the like arbitrary and illegal Opinions: And therefore being now stimulated by some highflown Counsellors, much about his own Age, he had no way to justify what he had done, and to compass and effect his further illegal Purposes, than by getting a pack'd Parliament return'd, through the Favour and Partiality of his Sheriffs, (the Majority of whom he had made of his Party.) As soon as they were assembled, they immediately attainted the Earls of *Arundel* and *Warwick*, as also the Duke of *Gloucester*, late deceased. And when the King had sufficiently revenged himself, as he fancied, on those whom he counted his Enemies, (though really they were his best Friends) he thought fit to grant a Pardon to the rest; but it was clogg'd with so many Exceptions, that it prov'd of very little Benefit to his Subjects. For it was left in his Breast to except whom he pleas'd, to the Number of Fifty Lords and Commoners, that he should nominate whenever he saw Occasion; by which Means none who had formerly offended him, could think themselves safe: Nor were any to receive Benefit by this Pardon, but such as did particularly take it out under the Great Seal; which most of the ordinary Gentlemen and common People neglecting to do, by reason of the great Charge of the Fees of such Letters-
Patents,

Patents, the King afterwards, under this Pretence, caused to be indicted the greatest Part of the most substantial People in divers Counties, for rising up in Arms with the said Duke and Earls, although they had been all before expressly pardon'd, by his Act past in the Eleventh Year of his Reign; but which he got revers'd in this Parliament; and so soon as they had finish'd what Business the King had for them to do, and given him greater Subsidies and Aids, than ever any Parliament had done in his Grandfather's Time; and likewise were made to take an unjust Oath, that they would maintain, and never agree to reverse any Statutes and Proceedings of that Parliament upon any Account whatsoever, they were then dissolv'd: But yet this was not till both the Lords and Commons had made over all their present and future Authority to a *Junto*, or Committee of about Fifteen Persons, the Major Part of which were of the House of Commons, because the King was most sure of them, especially one Sir *John Busby* their Speaker, who was the chief Promoter of his Arbitrary Designs.

And it was by the Judgment of this *Jun'to*, that the King's illegal Sentence was confirm'd against the Dukes of *Hereford* and *Norfolk* to be banish'd, the one for Ten Years, and the other for Life, without any Crime prov'd against either of them, but what they accus'd each other of, and which was to have been tried by Battel; but he being jealous of the Success of it on either Side, he thought it the surest Course to be rid of them both at once; and which was yet more unjust, upon the Death of the Duke of *Lancaster*, he caus'd the Duke his Son's vast Estate to be sequester'd into the *Exchequer*. But being thus doubly provoked, he then, during the King's Absence in *Ireland*, upon the Invitation of a great many of the Bishops and Principal Lords and others, who were weary of his Tyrannical Government, took the first Opportunity of coming home, being accompanied by *Thomas Arundel*, Archbishop of *Canterbury*, (who had been lately deprived and banished) not only to rescue the Nation from the intolerable Oppression it then groaned under, but also to procure the King to be *deposed*, and himself to be seated on the Throne. These Proceedings, which were afterwards condemn'd by Parliament in the 1st of *Edward IV.* I shall not here offer to vindicate; but only remark, that if this sudden and unexpected Stop had not been put to this King's Arbitrary Designs, it is highly

highly probable that he then, in the Flower of his Age, not being above 33 Years old, might, within a few Years, have procured this *Junto* of both Houses to have made over their own Authority, and that of all future Parliaments, into his sole Will and Power, whereby he would have become as absolute a Monarch, as any at this Day in *Christendom*.

Now after all this that I have truly related, whether had it been better for the Happiness of this Nation, that by God's over-ruling Providence Affairs took this Turn, tho' by means perhaps not altogether justifiable; or that a fundamental Part of the *Constitution* being destroy'd, a free People should thereby have been made no better than Slaves, to the Arbitrary Lust and Power of a single Person, of so cruel and implacable a Temper as this Prince appears to have been, I will submit to the Consideration of all true Lovers of the Ancient Laws and Constitution of this Kingdom to determine: For as for such *Jacobite Tory Theologues* as this Author is, it signifies not much what Opinions they are of, provided they did not, by their poisonous Pens, corrupt the Principles and Notions of *raw* and unthinking young Gentlemen in our Universities, as well as other Places.

I have dwelt the longer upon this Subject, to set this Matter in a true Light, since he has made but a *very dark Figure* of it, and has made it so much the worse, because (he says) "the Laws of Nature were *Id. p. 12:*
" violated, and the nearest in Blood were call'd
" in to finish the Works of Horror.

What the Vindicator means by *finishing the Works of Horror*, I cannot guess, unless he would make the Successors to those Princes to have ordered their being murder'd; which as to the former of them, *viz. King Edward III.* as (I'm sure) he can find no Historian that mentions any such Thing; *Mortimer* Earl of *March*, and *Adam* Bishop of *Hereford*, being reported as the sole Orderers and Contrivers of it: And as for the other, *viz. Henry IV.* though I allow some more modern Authors have made *Richard* to have been murder'd by his Order, yet *Froisart*, a foreign Historian, who liv'd in that very Time, and *Walsingham* who liv'd not many Years after him, do affirm the quite contrary, and particularly the latter; who says, that this Prince

Prince starved himself to Death, upon the News of the Defeat and Execution of those Lords, who had delign'd to murder King *Henry IV.* and thereby to set him free.

But he now returns to his main Subject, from which he has digress'd, and goes about to prove (what no *Ibid.* Body denies), " That an *English* King cannot be " subject to the Parliament, abstractedly consider'd, as an House of Lords and Commons, because he " receives not his Power from them alone, but succeeds to " the Crown *Jure Hereditario*.

He then proceeds to tell us, in what Sense the *Civilians* understand this *Jus Hereditarium*, which because the Civil Law is of no Force in *England*, as to the Succession of the Crown, and that our Common Law uses those Words in a quite different Sense, for the Succession of the next Heir by Blood, and by which alone these Gentlemen themselves suppose the next Heir has now an indefeasible Right to it; therefore all he says upon this Head, is wholly foreign to the Point in Question: So that having in the Preface sufficiently expos'd the Inconsistency of this *Civil Law Hereditary Right* with that, which they themselves maintain to be the ancient *English* original Constitution, viz. an *Indefeasible Hereditary Right by Blood*; I shall say no more of it here, but refer the Reader to the Preface; as also to what I shall further add concerning it, when I come to shew the Invalidity of King *Henry the VIIIth's* Will, whereby he design'd to pass by the Issue of his Eldest Sister the Queen of *Scots*, and to have settled the Succession of the Crown, in Case of Failure of Issue by his own Children, upon those of his younger Sister the Dutches of *Suffolk*, who should have succeeded to the Crown, had that Will been duly Executed, according to the Intent of the Statute of the 35th Year of his Reign.

I shall therefore in the next Place consider *Ibid. p. 5.* what this Writer tells us a few Pages before, " That we must date our Constitution from " *William* the Conqueror, from whom we receiv'd our " Laws, and Model of Government, and made the Kingdom a perfect Property; for he gave it by *Will* to the " younger Son, and excluded the Elder.

In Answer to this, I need only observe, that in this he is either wilfully mistaken, or else has not read the History of those Times; for if he would have but follow'd his own Author of the *Hereditary Right*, he might there have found, that this King, to whom he ascribes this Original Constitution, did not by this supposed Will make this Kingdom to be more his Property, than it was *Edward* the Confessor's, who likewise by his Testament bequeathed the Kingdom to Duke *William* his Cofin; which Will, the Author last mentioned says, was also confirmed by the Great Council of the Kingdom.

But whoever will take the pains to peruse our Ancient Historians, may there find, that King *William* did not take upon him so much as *Edward* the Confessor had done; for *Ordericus Vitalis*, who lived *Hist. Rev. Ang. p. 65.* in those Times, relates what the King said on his Death-bed, "As for the Kingdom of *England*, he would not make any body Heir of it, only "with'd that his Son *William* might succeed him. And for that End, he sent over with him an Epistle, or Letter, to Archbishop *Lanfranc*, on his Behalf, concerning the Electing or Ordaining him King: Which was accordingly done in a great Council of the Bishops and Nobility of *England*, according to that King's dying Desires.

But this Writer omits to tell us, how *Henry I.* came to the Crown; which was not by any Will at all, but purely from the Choice of the Bishops and Great Men assembled in a Council at *London*; who prefer'd him before his Elder Brother, then in the Holy Land. And yet even to this King, (who enjoy'd the Crown by Election, and not by any *Hereditary Right*, and according to his Principles, was no better than an Usurper) he allows a Power of making the Empress his Daughter his lawful *Ibid. p. 9.* Heir to the Crown, to the Exclusion of his Elder Brother Duke *Robert*, and his Son *William*, who were then both living.

And further, according to this Gentleman, any other Usurper had the like Power: For *Ibid. 13.* he allows King *Stephen* a Right to dispose of the Crown by his Deed or Charrer to *Henry* Duke of *Nor-mandy*; and he has there given it us from *Rymer's Fœdera*, to this Effect: "Know ye, *Tom. 1. p. 19.* "that I King *Stephen* have appointed Hen-

“ *ry Duke of Normandy* for my Successor to the Kingdom
 “ of *England*, and Heir by *Hereditary Right*: And thus I
 “ have confirm’d to him, and to his Heirs, the Kingdom of
 “ *England*.

From whence he thus concludes, “ That the Crown of
 “ *England* was at that Time *Hereditary*, (*i. e.* by Will or
 “ Charter;) and if we prosecute our former Definition of
 “ *Hereditary Right*, he says, We shall gain no trifling Ar-
 “ gument to support our Question: For (as he goes on) if
 “ *Stephen* had not the sole *Property* of the Kingdom of
 “ *England*, he could not constitute *Henry* Heir and Successor
 “ to that Crown.

In Answer hereunto, I shall admit, for the present, this Argument to be good, and that *Stephen* had such a *Property*; but then let us see what will be the Consequence of this Assertion, *viz.* That if *Stephen*, a mere Usurper upon the Right of the Empress *Maud*, Duke *Henry’s* Mother, by mere Possession of the Crown, could acquire such a *Property* in it, as to make whom he pleas’d his Successor, and that to the Prejudice of Earl *William*, his only Son then alive: Then it is demonstrable, that an *Hereditary Right* by Blood was not at that Time settled, nor receiv’d for the only Rule of Succession to the Crown of *England*. And then I wou’d fain know, why also might not the late King *William*, or Queen *Anne*, (supposing them to have had no better a Title than *Stephen*, *viz.* by Usurpation) have appointed the Princess *Sophia* of *Hanover* for their Successor, and given the Kingdom in like manner to her and her Heirs by *Hereditary Right*; since such a Right by Will or Charter, is, according to his Notions, *tantamount* to a Right by Blood, which, he tells us, is only to take place, *when there is no manifest Will* to the contrary? And, Secondly, Why an Act of Parliament made by King *William*, and confirm’d by Queen *Anne*, whereby the Crown was settled upon the said Princess, and her Heirs, should not as well bar the Title of the *Pretender*, as that Charter did that of King *Stephen’s* Son and Heir?

But to avoid this Difficulty, he has found out a new Title for King *Stephen*, which he himself
Id. p. 14. never thought fit to insist upon. For he says,
 “ That he neither claimed his Right to the
 “ Crown by Possession, nor by the Choice of a Parliament;
 “ but

“ but upon an Oath a Lord Steward made, that *Maud* the Empress was excluded by Will.

Now tho’ what he relates may in Fact be true, That there was such an Oath made, yet that was not the Reason which induc’d the States of the Kingdom to elect *Stephen* King; because through the Interest of the Bishop of *Winchester* his Brother, and of several other great Lords, they were resolv’d to have done it, whether any such Oath was made or not. But *Malmesbury*, and other Historians of that Time, affirm, That King *Henry*, on his Death-bed, made the Empress his Daughter sole Heir of all his Dominions. However, allowing such a Nuncupative Will was sworn to be made in the manner above related; yet even that was not good till accepted and confirm’d by the Estates, by whose Authority *Stephen* was made King, as this Vindicator might have found to be own’d by the Author of the *Hereditary Right*. The like I may say concerning the above-cited Charter of King *Stephen*, whereby he appointed Duke *Henry* his Heir: For notwithstanding this positive Assertion, That it was made without any Intervention of a Parliament; it was not so; for both *Henry* of *Huntington*, and *Gervase* of *Canterbury*, relate the quite contrary, and shew us, that it was confirm’d by a great Council of the Estates, first at *Winchester*, and afterwards at *Oxford*; wherein King *Stephen* having adopted that Duke for his Son, he then took an Oath to honour and obey him as his Father and Sovereign, so long as he liv’d. And at this last Council all the chief Men, at the King’s Command, did Homage, and swore Fealty to him. But let us for once grant him all he can desire, that both these Usurping Kings (*Henry* and *Stephen*) had such an absolute Property in the Crown, as to enable them to appoint whom they pleas’d their Heirs to it; then it will follow, that *Henry I.* (who he says was an Usurper, and had no other Title than Possession) could bequeath the Crown by his Will to his Nephew, in Prejudice of his only Daughter and Heir, to whom the whole Kingdom, but a few Years before, had at his Command done Homage, and sworn Allegiance, as to his next Heir. But if he will say, that *Henry* had a Right to the Crown afterwards by the Cession and Agreement of his Brother Duke *Robert*; yet that was still upon Condition, that if *Henry* deceas’d without Issue-Male, the Suc-

Vid H. Hunt.
 & Flor. Wi-
 gorn. *ad* An.
 1101.

cession

cession of the Crown should revert to *Robert* and his Heirs. And that both were living long after this Agreement was made, is certain; even at that very Time, when *Robert* was a Prisoner, King *Henry* made the whole Kingdom to swear Allegiance (after himself) to his said Daughter. So that according to these Authors cited in the Margin, here was the Right to the Crown twice cut off by the last Will or Charter of two Kings, who themselves had no other Right to it, but what *Election* and Possession gave them, and that to the Prejudice of the *next Heirs by Blood*, about whom the whole Question depends.

Ibid.

*Rymer's
Federa,
Tom. 1. p.
35.*

As for what follows to the same Purpose in that Passage of *Henry* the II'd's Letter to the Pope, "That with Tears in his Eyes he spake it, he was forced to engender in his Mind a mortal Hatred against his own Flesh, and seek out for Heirs more remote: Yet this at most was but a Threat: For in the first Place, he never sought for any such, but was soon after reconcil'd to his Sons; and admit he had exercis'd the same Prerogative as his Predecessors had done, in disposing of the Crown by *Will* to the Prejudice of his Sons, that *Will* would not have signified any Thing, unless it had been allow'd and confirm'd by the Estates, as I have already sufficiently demonstrated. And that King *Henry* could not dispose of the Succession without the Consent of the Estates, plainly appears by this Instance, that when he had a mind to make his Son Prince *Henry* King jointly with himself, he thought best to summon the Estates of the Kingdom to swear Fealty, and do Homage to him before the Coronation, whereby they confirm'd what the King had a mind before to have done.

*Roger
Hoveden's
Hist. p. 296.*

Page 15.

But in the next Page he tells us, that notwithstanding these plain and evident Proofs, some insist upon the Legislative Power of the Two Houses, which is not near so Ancient as is pretended, &c. And for the Proof of the sole Legislative Power of our former Kings, he again cites

" from

“ from *Rymer's Fadera*, a Letter of *Henry* the 11^d's, which
 “ had the Force of a Law, whereby it is declar'd, That if
 “ any Ship should be wrecked upon the Coasts of *England*,
 “ *Picardy*, &c. if any living Creature escaped out of the
 “ Ship, even a Dog, neither he nor his Successors should
 “ claim the Wreck of that Ship, nor any other Person,
 “ who should have Property in the Wrecks. From whence
 “ the Vindicator observes,

“ *First*, That the King was then look'd upon as the So-
 “ vereign Power ; for by the *Rhodian* Law, and by the
 “ Law of Nations, such Wrecks belong'd to that Power
 “ alone.

To this I answer, That as to the *Rhodian* Law, it never
 had any Force in this Kingdom ; and for the Law or Cu-
 stom of Nations concerning Wrecks, that is various, ac-
 cording to the several Places ; for in many Parts of the
East and *West-Indies*, as also in *Africa*, they belong to the
 first Occupants of those Wrecks. But admit that it was
 then the receiv'd Law or Custom in *England*, for all
 Wrecks to belong to the King, whether any living Creature
 escaped out of the Ship or not, might not King *Henry*, by
 his Letter or Declaration under his Seal, so far decline his
 own Right, and that of his Successors, by an Act of Grace
 and Pity to the unfortunate Owners of such Vessels, where
 neither Man, nor even a Dog, or other Creature should
 escape, as not to claim his Prerogative in that Case ?
 I say, might he not do this, without being looked
 upon as the sole Legislative Power ? For if he had
 been so, he might have not only confirm'd
 the famous Constitutions of *Clarendon* by Rog. Hov.
 his sole Authority, (as he did by the Assent *ad An. 1176.*
 of the Estates of the Kingdom) but also
 might have made and promulgated them anew, as bind-
 ing Laws without their Consent or Advice. The like I
 may say of a Body of Laws relating to the King's Forests,
 still in *Manuscript*, Entitled, *Assisa Regis Henrici*, &c.
facta apud Woodstock per Assensum & Consilium totius
Regni sui.

“ As for his Second Observation, That if King *Henry*
 “ had not been the Supreme Legislative Power, he could
 “ not

“ not make a Law to affect the Right of others; for this
 “ Law extended to his Heirs, and to any Persons, to whom
 “ such Property should be Farmed.

In Answer to this I say, The First Part of the Observation makes against his Opinion, and thus I prove it; If King *Henry*, as the sole Supreme Legislative Power, made this Law, then he could not by it bind his Successors, for they must be invested with the same Supreme Power too, and so could not be bound by any Law of their Predecessors; it being a constant Maxim in the Civil, as well as Common Law, *that the Supreme Power* (wherever it is plac'd) *cannot bind it self*. As for the Right of Farmers, or Grantees to such Wrecks, since it wholly depended upon a Grant from the Crown, it might very well be limited or restrained by a subsequent Grant or Concession, as this certainly was, especially seeing it was an Act of Grace and Mercy, and for the Publick Good not only of the Subjects of *England*, but of all other Nations: And further, he did not herein act as King of this Kingdom only, but of all his other Dominions abroad, and therefore no Argument can be drawn from thence to assert the Constitution of *England*, more than any other Country under his Government.

His next Instance from *Rymer's Fadera* is,
 Page 16.

“ The Agreement between *Henry* the 1st,
 “ and his Rebellious and Ungracious Sons;
 “ whereby it was stipulated, *that those who in fighting*
 “ *against the Father had robb'd the Subjects, and ran away*
 “ *with their Goods, might return, and not be obliged to*
 “ *answer for the same*. From whence he infers, that this
 “ was as much a disposing away the Property of the
 “ Subject, as if it had been formally pass'd by Act of
 “ Parliament.

Now to this Instance it may be said, That such an Agreement might be made between the King and his Sons without supposing any absolute Legislative Power in him; since the like Clause was inserted for those that fought for the Sons against the Father: And the younger *Henry* being King as well as the other, he had likewise the same Legislative Power, because this Agreement was made by way

of Charter, and Seal'd by both of them. And then the Father was not the sole Supreme Power; and because the King and his Sons thus agreed mutually to pardon all Wrongs and Violences that had been committed in taking away the Goods of their respective Subjects and Followers, it does not therefore follow, that the Property of those Goods was in either of these Kings.

For the rest of his Instances, they being taken from the arbitrary Proceedings of King *Richard* the 1st, most of them can be of no Force and Authority, as being done in one single Reign, by a Prince for whom the whole Nation had an extraordinary Honour and Affection.

" Indeed where he says *Richard* the 1st *Ibid.*

" exercised the Legislative Part, as high as

" any Person can conceive, in establishing by his own Au-

" thority Naval Punishments: for immediately before his

" Voyage to *Jerusalem*, he issued forth an Order for the

" several Parts of either capital or lesser Punishments,

" which should be incurr'd by those who accompanied him

" in his Journey. Now (says he) if any

" Person can find an House of Lords or *Id.* p. 16.

" Commons in this Ordinance, he must

" strain the Sense very high. The Words run thus, (the

" *Latin* I omit, but he thus renders them in *English*) Let

" 'em know we have made these Laws by the Advice of

" honest Men. The Ordinance may be seen in his *Ap-*

" pendix, N. 2. Page 107, and in *Rymer's Fœdera*, Tom. 1.

" Page 65.

In Answer to this, I need say no more, than that I think there cannot be a plainer Proof of this wretched Man's Ignorance or Insincerity than this; for if he had but set down the Conclusion of these Ordinances of War, for so I may call them rather than standing Laws, the Inference he draws from thence, that no *English* Lords or Commons are mention'd therein, would quickly have vanished into Air; for they could not in that Place possibly be any Ways interess'd in passing them, because they were made at *Chinon* in *Anjou*, just before he began his Voyage: So that these Ordinances did no more concern the Subjects of *England* than those of that King's Territories in *France*, what Punishments

*R. Hoved.
Hist. p. 379.*

ments should be inflicted for the Crimes and Offences committed during that Expedition; and no body doubts, if that Prince had been a Subject, and only the Admiral of that Fleet, but that he might have made such Ordinances of War, and appointed the like Penalties of Death, Banishment, and pecuniary Mulets, for the Maintenance of good Discipline and Order among Soldiers and Seamen, who went to accompany him in that Voyage; but however, they could be of no longer Duration than till their Return from it.

And as for his Translation of that Clause, that the King made those Laws, (as he calls them) only by *the Advice of honest Men*, he there shews with a Witness, his Want of understanding the Stile of such publick Instruments; for first the *Latin Word Justitias*, does not properly signify standing Laws, but temporary Ordinances. Secondly, Nor do the Words *Proborum Hominum* signify barely *honest Men*, of what Sort and Condition soever, but the best and most considerable Officers, as well of his Army as of his Fleet, (whom *R. Hoveden* there calls his Admirals and Constables), by whose Advice these Ordinances were no doubt drawn up and confirm'd by him, not as King of *England*, but as Duke of *Normandy* and *Aquitain*, and as Captain-General and Admiral of all those Forces both by Sea and Land, during that War, of which the Major Part were not his *English* but *French* Subjects.

But his main Instance is, " This King's
Ibid. p. 17. " Letters to his Justices in *England*, by Vir-
 " tue of which, *without any Intervention of*
 " a Parliament, he rais'd, in those Days, an immense Sum
 " of Money.

Now for once I will grant this Fact to be true, as 'tis here related, that this great Sum was rais'd without any Consent of a great or common Council of the Kingdom; for as for the Word *Parliament*, it was not then in Use, nor till many Years after: But what would he gather from thence, that Taxes were always impos'd by the King without any Consent of Parliament? If he will assert this, I can prove the contrary, by divers Instances both before and after the pretended Conquest: therefore there is nothing of any Certainty to be drawn from this Particular, which was done

done in a Case of Necessity, that would admit of no Delay; it was to set the King forthwith at Liberty, he being then a Prisoner in *Germany*; and therefore his Justices, who govern'd in his Absence, might at that time exert their utmost Power, and impose Twenty Shillings on every Knight's Fee, and also take a Fourth Part of all Laymens Revenues and Clergymens, with a Fourth Part of their Goods; But this was only to be done for once, and therefore ought not to be cited as a Proof of the King's Ordinary and Legal Authority; "any more than what he

"there says, was done in respect of the *Ibid.*

"Church, from which the very Goods and

"Plate of the Churches were taken away to make up the

"Sum; though at that Time it was as strongly a secur'd

"Property as was in the whole Kingdom.

In answer to which, I shall only put to him this *Dilemma*: Either the King's Justices took those Goods according to Law, or they did not: If the former, then the Church and its Clergy had their Property no better secur'd to them than the Laity had theirs; which I suppose he will not affirm, because all former Kings at their Coronations, took an Oath to defend and not oppress the Church: But if this was really a Case of Necessity, then all that can be said in excuse of it, is that old Proverb, *That Necessity has no Law*. But our Vindicator himself acknowledges, "That the King had
 "no Right to the Goods of the Church, when he says he
 "call'd it *borrowing*; but however (*says he*) to borrow
 "with such Warrant as could not be resisted, was little better than taking away by Force". Now to this I say, Irresistible Force could either give a Right so to do, or it could not; if the former, then all such Force, whensoever exercis'd by the Supreme Power over the Goods of the Church, will confer a like Right; but if it gave no such Right, to what Purpose does he alledge it? And if meer Precedents would give a Right, then the People, *i. e.* the Bishops and Nobility of *England* had a sufficient Right even to resist this King's Authority; for we find, That being headed by Earl *John* the King's Brother, and the Archbishop of *Rouen*, and *William* the Earl Marechal, they took up Arms against *William Longchamp* Bishop of *Ely*, then Chancellor, and the King's chief Justiciary or Lieutenant over all
 M *England,*

*Rog. Hoved.
Chron. Rad.
de Diceto.*

England, for his haughty and arbitrary Government, and made him to quit the Realm in Disguise.

And we do not find he was ever restored by that King, notwithstanding that so soon as he knew of his being a Prisoner with the Emperor, he went to him to complain of their resisting that Authority wherewith he had entrusted him; but without any Redress, as I can find; the King being very well satisfied by Letters of his insolent Behaviour.

But what if after all, this great Tax was either imposed by the Consent of a Common Council of the Kingdom, or at least voluntarily paid by way of a *Benevolence*? since *Rad. de Diceto*, who liv'd at that Time, says, It was rais'd *Communi Assensu*.

“ As to the Second Instance of this King's Arbitrary
 “ Power, in demanding Children of Noblemen for Hosta-
Ibid. ges which were delivered to the Emperor for
 “ Security of that Part of his Ransom, that
 “ remain'd unpaid; and this shew'd a mani-
 “ fest Power over the Liberties of the Nobility.

As to this I need say no more, but to ask him the same Question, as in the Case of the Church Goods, *Quo Jure*, and by what Law or Right was it done? If by irresistible Force, it is not to be cited as a Precedent: But after all, there was no such forcible taking away of these Noblemens Sons, as this shameful Trifler would make his Readers to believe; and consequently no such Arbitrary Power exerted over the Liberties of the Nobility: For granting it to be true, that the King might nominate the Persons whose Sons should be so sent over; yet the sending them must have proceeded from the voluntary Consent of their Parents, who being the King's most faithful Subjects and Friends, might think it not too much to part with their Children for a Time, thereby to procure his Enlargement: For though they were no less than Twenty Earls and Barons Sons sent as Hostages, yet they had certainly sufficient Power to have resisted the then Lords Justices, as well as they had the Bishop of *Ely*, if they had not approved of the King's Desire to have them thus sent over to him,

So that I hope what has been here said, may serve for a full Answer to all his insulting Arguments against Dr. *Kennet*, why no Great Council could be summon'd at this critical Juncture ; for this was no Proof that the King might make what Laws, and raise what Sums of Money he pleas'd, both upon the Clergy and Laity ; nay, so much as to take the very Plate out of the Churches, by virtue of the Supreme Arbitrary Power : For it is a Rule frequently made use of by this conceited Writer, as well as those of his Party, in all Instances of the Subjects asserting a Right to vindicate and preserve their Liberties and Privileges against the King's encroaching Arbitrary Power, that *a Facto ad Jus non valet consequentia* : And why the like Maxim may not hold true, *vice versa*, in Case of the King, I desire he would satisfy us when he shall trouble the World with such another choice Piece, as this Pamphlet is ; which plainly shews, what he says of the Doctor, that *he is not half the Historian he pretends to be*, may be more truly applied to himself.

His last Instance of King *Richard* the 1st's sole Legislative Power, is, " The Pope's Page 18.
 " Bull of Confirmation of a Statute, (as
 " this careless Scribler improperly calls it) for he him-
 " self says, we shall find by the Stile, it was no more than
 " a Letter under his own Hand, in which he solemnly
 " Enacts, *That in Consideration of the Care and Affe-*
 " *ction of his Clergy, in contributing their Plate and*
 " *Riches to his Service, the like Demands should not be*
 " *made, either by himself, or by his Posterity, for the fu-*
 " *ture, upon any Pretence whatsoever, and that all the*
 " *Liberties of the Church should be inviolably preserv'd.*

Now I must here take Notice, that this very Letter sufficiently confutes what he has said concerning the King's Prerogative, in taking this Plate by an irresistible Force ; for if so, it could not have been a *voluntary Contribution*, as this Letter expressly calls it ; and is likewise an implicit Concession, that what had been already done, was a Violation of the Rights and Privileges of the Church, or else the last Clause had been impertinent, *that all her Liberties should for the future be inviolably preserv'd.* But since from this suppos'd Statute, (which was no more than the

King's Charter, or Declaration under the Great-Seal, whereby he assured the Clergy he would never for the
 " future so encroach upon their Ecclesiastical Liberties and
 " Privileges) this weak Creature thinks he can find how the
 " Clergy came to be exempted for the future from the
 " like arbitrary Power, because, (he says) by this Letter
 " he bound both himself and his Posterity not to raise any
 " Taxes upon the Church, upon any Pretence whatsoever;
 " and accordingly the Clergy ever since, till
Ibid. " in the Reign of King *Charles*, have Taxed
 " themselves in Convocation; or at least,
 " they had a legal Claim to that Privilege, although a
 " bullying Monarch, or an Usurper, might encroach
 " thereupon.

There is nothing in all this Preface, that more plainly betrays (I believe) his incorrigible Ignorance of the Ancient *English* Constitution, than this Paragraph; wherein he wholly gives up the Privileges and Liberties of the Clergy of *England*, both before and after the pretended Conquest, until King *Richard* made this Ordinance, which was confirm'd by the Pope: Whereas if he had but read Sir *Henry Spelman's* First Volume of Councils, he might have seen, that under the *English-Saxon* Kings, the Clergy of *England* were liable to no Taxes impos'd by the Civil Power, but only what pass'd under the Title of *Trinoda Necessitas*, viz. to contribute to the Repair of Bridges, Highways, and such Castles as were for the necessary Defence of the Kingdom: Nor did their Lands pay any *Dane-Guelts*, as those that were in Lay Hands. So that when *William I.* brought all Bishopricks, and such Abbeyes as were Royal Foundations, under the Subjection of *Knight's Service*, it is mention'd by our Historians as a great Encroachment upon their Ancient Ecclesiastical Liberties; as also when, in like manner, he seiz'd all the Plate and ready Money that could be found laid up in Churches and Monasteries, this is mention'd by the same Historians of those Times, as an Act of manifest Sacrilege. And yet he did not pretend to borrow it with a Resolution ever to pay it again, but upon a mere Civil Account, as being suppos'd to belong to the *English-Saxon* Lay-men, who had laid up their Treasure in those Monasteries, as in Places exempted from the Lay-Power. Now here was a violent taking, which could not indeed be resisted;

resisted ; but will he therefore say, that this King, even as a Conqueror, had a legal Right so to do? But notwithstanding all this, we do not find that either he, or his Successors, who were as Absolute as himself, ever took upon them to do the like, or to impose Taxes on the Clergy, without their Consent in their Synods or Convocations ; and therefore all that follows is very impertinent: For if (as he grants) some succeeding Kings violated this their Privilege, (and whom he therefore calls, *Bullying Monarchs* or *Usurpers*) they were no more to be blamed for so doing, than King *Richard's* Lords-Justices for what they did, since it was by the express Order and Authority of the Sovereign Power.

And as for that King's tying up the Hands of his Posterity from following his Example, by virtue of this supposed Statute; this, if taken in the literal Sense, could not oblige his own Posterity; for he deceas'd without any lawful Issue: And for his Successors, though they are not mention'd in that Letter, but supposing them to have been virtually included by the same Reason as his Posterity, within the Intent of this Declaration, yet it would have been of no Effect: For if his Brother *John*, the succeeding King, was then the Absolute Sovereign Power, he could be no more concluded by any precedent Law or Statute, than the King or Parliament can be at this Day by any Act that they shall make, tho' with a Clause that it shall never be repeal'd.

As for what follows at the End of this Paragraph, " That they (*viz.* the Clergy) *Id.* p. 19.

" have thought fit since, to recede from this

" Privilege of taxing themselves, and which he calls the
 " only Privilege that could make a Monarch, from any Po-
 " litical View, think it worth his while to attach them to
 " his Interests; and that the Consequences (*viz.* of giving
 " up this Privilege) they have since severely felt.

I shall only here remark upon it, That as the Clergy, by a tacit Consent, did, in the Reign of King *Charles II.* give up this Privilege; so since it was done without the express Vote or Act of either House of Convocation, I could give my Consent, that upon their humble Petition to the King, they might be restor'd to it again, provided for the future they should have no Votes as Freeholders, in the Elections of Knights of Shires; nor as Honorary Burgesses, nor Freemen of Boroughs, or Towns Corporate, should any more

concern

concern themselves in the Elections of Members of Parliament for those Places: And then the inferior Clergy might quickly be convinced, whether they would thereby mend their present Condition of being taxed with the Body of the Kingdom; since so long as the Bishops, Deans and Proctors for Cathedral Chapters, so far exceed those Proctors, or Clerks, who represent the inferior Clergy in all Convocations; and that the major Part of those above-mention'd Dignities and Preferments are in the Recommendation, or rather Nomination of the Crown; no doubt, but what was practis'd before, would be done again, and the major Part of the Members of those Assemblies, the better to recommend themselves to the King's Favour, would give him a greater Tax out of their Ecclesiastical Revenues, than what the Parliament would lay upon them, in Proportion, out of their Temporal Estates; as was plainly seen in all the Convocations of King *Charles I.* as well as those of his Sons Reigns. For before that Alteration he mentions, the Clergy laid near double the Number of Subsidies upon themselves, to what the rest of the Kingdom paid by Virtue of any Act of Parliament; the Consideration of which, made them (especially the inferior Clergy) the more willing to give up that Ancient Privilege.

Page 19.

And therefore, as for his Reflection in the next Paragraph, "Perhaps some Men, who
" have taken Opportunity from the depressed and miserable State of the Clergy, in late Days,
" may deride this Notion, and fancy our Fathers had no
" more Veneration for their Religion, than their Posterity,
&c.

Now to set this Matter in a true Light, I do not see any Cause this Non-juror has to make such a severe Reflection; for I know of no Privilege the Clergy have lost, but what was done by their own tacit Consent, and which never was repin'd at, nor found fault with, till since the late *Revolution*, when some of the Clergy would fain have had it in their Power, not to own and submit to such Sovereigns as were recogniz'd by an Act of the Estates, and consequently would have been exempted from swearing Allegiance, or paying any Taxes towards a War with *France*; which was at that Time of absolute Necessity to maintain their Title to the Throne against any sudden Invasion from that Kingdom, which could not but be then expected.

I shall

I shall conclude this Point, with taking notice of this inveterate Man's Precedents from some Letters of King *John* to the Clergy; "who per- *Ibid.*
 "haps (as he slyly insinuates) was not the
 "best Christian in his Days, yet he look'd upon these Pri-
 "vileges of the Church as unsurmountable: He wrote a
 "most submissive Letter to the Clergy, and urged them
 "from all the Motives of Interest and Honour, to raise a
 "Sum of Money to advance *Otho* to the Empire, &c.
 "and that he condescended to beg of those whom his An-
 "cestors had been used to plunder. So likewise a like
 "humble Letter he wrote to the *Cistercian* Monks, to beg
 "their Assistance against the *French* King; as also he sent a
 "Letter upon an Account of the like Nature, to the Cler-
 "gy of *Ireland*.

In Answer to these Instances, I shall not deny the several Facts to have been as he has recited them from the Pages he quotes in *Rymer's* first *Tome* of *Fadera*; yet for all that, I deny the Con- Page 130,
 sequence he would draw from thence, that 132, 136.
 it was by virtue of that supposed Statute of *Richard* the 1st, already-mention'd, that King *John* was forced to make Use of this before unusual Condescension, since I have fully proved, that if he had also the same absolute Legislative Authority in himself, as the late King his Brother had; any Precedent, Act or Statute of his, could no ways oblige him, for the Reason 'before given; and therefore this way of obtaining Money from the Clergy, by begging or requesting it of them, as their voluntary Concession, never proceeded from that supposed Statute, but from the Ancient Custom and Constitution of this, as well as other Kingdoms. For how could that supposed Privilege granted by King *Richard*, and confirm'd by the Pope, extend to the Clergy of *Ireland*? Which is not at all mention'd, either in the King's Letters, or the Pope's Confirmation; and in which Kingdom their Privileges had never been violated in the late Reign, by a forcible taking away their Goods, Plate, or Money, for his Ransom? But if he were not wilfully blind, or really ignorant of King *John's* Dealing with the Clergy, he would have found, that after his being *excommunicated* by the Pope, upon the major Part of the Bishops, Clergy, and Monks, owning the
 the

the Pontiff's Authority, (in Contradistinction to that of the King) he seiz'd all their Lands and Goods into his Hands, and so held them for the Space of near Three Years, as long as the Pope's Interest continued in the Kingdom; and whether the Prefacer may not on that Account rather reckon him amongst his *bullying Monarchs*, or Kings *de facto*, and Usurpers, I shall leave to his better Consideration.

'Tis true, indeed, that upon this King's Submission to, and Reconciliation with the Pope, he acknowledg'd his Offence, and oblig'd himself to make the Clergy and Monks due Satisfaction for the Injuries and Damages he had done them; yet this was not till for fear of an Invasion from *France*, as well as of a Rebellion at Home, he had surrender'd up his Crowns of *England*, and *Ireland*, into the Hands of *Pandulf*, the Pope's Legate, from whom he receiv'd them, upon Condition of becoming his Tributary and Vassal. So that this rather seems an Instance of Fear, than of any Sense of Religion; which our Non-juring Jacobite (contrary to the Authority of all our Historians) makes this King to have favour'd.

How far he has been necessitated to extend his Preface beyond its just Length, I shall not enquire, but leave it to the indifferent Readers Judgment, whether what he has therein advanc'd, requir'd that Length or not, and how far his Proofs have served to fortify his Arguments.

As for what follows by way of Consequence and Reflection, "That he (*viz.* the Reader) may now see the "Rights of the King and Clergy fairly dropp'd, our old "Constitution entirely neglected, and even old Christianity taking its Leave with the rest. Now what Reasons he has to make such a severe, nay unjust Reflection upon the present Government both in Church and State, I cannot tell; but guess them, by his falling upon one, who (he says) would persuade us he is Bishop of *Bangor*, only because he has wrote in Defence of the *late Revolution*, and the Deprivation of the *Five Bishops* by Act of Parliament, for not taking the Oath of Allegiance then Enacted; I shall not therefore concern my self in this Dispute, because I am very well satisfied, that as that Learned Bishop,

shop has hitherto done against others, so he is likewise very well able to defend himself against such a petty Chapman of small Wares, should he ever think he deserv'd his Notice.

His next Reflection is, "That he must needs say *our* (that is his) Adversaries *Ibi.* have taken severe Methods; that is, I suppose, in depriving these Nonjuring Clergy Men, who refused to own the present Government, by taking the same Oaths as were requir'd of the Laity.

I cannot see how this is any ways a severer Method, than when in the Beginning of Queen Elizabeth's Reign, several Popish Bishops, and many dignify'd, as well as inferior Clergy-Men, were deprived by Act of Parliament, for refusing to take the Oath of Allegiance and Supremacy: Nor do I see any other Difference in the Case of the present *Nonjurors*, and those in her Time, than that they own'd the Supremacy of another Ecclesiastical Head, *in ordine ad Temporalia*, and these another Temporal Head, *in ordine ad Spiritualia*; that is, that he may bring in and set up what Religion he pleases by an Absolute and Irresistible Power. But as for what follows, *viz.* How far the God of Justice will protect and defend his Cause, must be left to his Divine Providence to determine, and not to this Writer's and his Parties unreasonable Wishes, and extravagant Expectations, which have been (God be praised) so often defeated.

His next Paragraph begins with this fair Profession, "That if he has advanc'd any Falshood, either in Politicks or Religion, he is ready freely to recant; but if he has not, then surely he merits some Consideration from the Reader. As to this I need only say, that I hope he will not take it amiss of me, if upon serious Perusal and Consideration of what he has said in this, as well as his former Treatise, by examining his first Principles, and then his Deductions from them, (which he calls *Corollaries*) as also those he has here drawn from the Precedents cited from Mr. Rymer's Collections, I have shewn he is out in his Politicks; and I doubt not but the like may be done in what he has wrote as to the Religious Part of the Controversy; which because it is not the Business of this pre-

sent Undertaking, and has been also already perform'd by far more able Pens, I shall omit saying any Thing more to it, only wish that he would be as good as his Word, and recant his Politick Errors, when they are so plainly expos'd; which if he were once thoroughly convinc'd of, I might hope he would quickly do the same as to what relates to Religious Matters, which indeed chiefly concern the Civil, or Legal Government of the State, and no ways belong to the Spiritual Discipline, or Ecclesiastical Government of the Church; for that still continues the same, by whomsoever it be administred, provided they are of the same National Church, as it is now by Law establish'd.

For what follows in this, as well as in the rest of the Paragraphs to the End of his Preface, I shall only observe, that by appealing to his Reader's Conscience, whether he can acquit his Conscience of so much as acquiescing in any Injustice done to God's Vicegerents, or in any Violation of the Laws of Nature, and that if he has, he may surely depend upon his feeling the Mistake, &c. He must certainly suppose, that such Injustice has been committed, as he there mentions; and who should be meant by it, but those who have own'd, and do still acknowledge the present Settlement of the Crown in the Person and Family of his present Majesty, I cannot imagine; and upon whom he denounces all those Temporal Judgments he there enumerates: But the best of it is, that such false Prophets as this Writer is, cannot predict, much less command Divine Providence to inflict what Punishments they shall wish, upon those that do not embrace all the same mistaken Principles and Notions with himself.

So likewise what he says in the next Paragraph against Tyrants and Usurpers, would likewise be very impertinent, were it not, that he makes all Princes to be such, that do not succeed to the Throne by an *Hereditary Right* in the Sense in which he and his Party understand it: But how far such Princes must be liable to those fatal Consequences he there mentions, (granting that they had been guilty of doing Wrong) is more than he can tell, since God does not always punish Kings, any more than private Persons in this Life, for any breach of his Commands.

Yet that he would be sure to put his Readers in Mind, who are only to be looked upon as lawful Possessors of the Throne, he has follow'd the Example of the Author of the *Hereditary Right*, and Publish'd the Act of *Recognition* of King *James* the 1st's Title to *Id.* p. 22. the Crown; " towards the Conclusion of " which, The Two Houses of Parliament do oblige themselves, and their Heirs and Posterities for ever, to be " true and faithful to his Majesty, and his Royal Progeny " and Posterity for ever, &c.

Now as to this Act which these *Jacobite* Writers call a sort of Contract between this Nation and that King, to maintain the Succession of the Crown for ever, in the next Heir by *Hereditary Right*, let him have carried how he will towards them; or whatever Natural or Moral Incapacities he may lie under: I shall first observe, That tho' by this Act it is acknowledg'd, that " upon the Death of Queen *Elizabeth*, the *Id.* p. 23. " Imperial Crown of this Realm did by inherent Birthright, and lawful and undoubted Succession, descend and come to his then Majesty King " *James*, &c. Yet by the following Engagement, whereby they only oblige themselves and their Posterity to that King, his Royal Progeny and Posterity for ever, it is without any Mention of *the next Heir by Blood*. So that the Promise or Engagement being only general, and not particular to any such next Heir, it allows, that whatever Prince of that King's Posterity, the Estates of the Kingdom shall think fit to recognize and acknowledge for lawful King of *England*, the Obligation as set down and limited by this Act, is literally performed, although he should not be the next Heir by *Right of Blood*, whom for some very weighty Considerations, they might think fit to pass by, and set aside. *Secondly*, That granting this had been such an *Entail* of the Crown, as that it had been expressly limited to the next Heir by Blood, and to no other: Yet such an *Entail* could signify nothing against a subsequent Act of Parliament, whereby it might be alter'd; since it is expressly declar'd, not only by the several Acts of Succession made in the Reign of *Henry* the VIIIth, but also of the 13th of Queen *Elizabeth*, " That the Succession of the Crown may be alter'd by the Queen, with the Con-

" sent of Parliament, and limited in such manner as the
 " Queen (and consequently any succeeding King) shall
 think fit: And therefore, that this very Act of Succession
 (if taken in the strictest Sense) being now alter'd and
 revoked by the Act of the Fourteenth of King *William*,
 and the First of Queen *Anne*, whereby the Crown is
 settled upon the Princess *Sophia* of *Hanover*, and her
 Issue, being *Protestants*; all Entails to any other sup-
 posed Claimants, as next Heirs, are thereby defeated and
 made void.

But I am sensible that this Writer, and those of his
 Party, who cannot deny the Force of these former Acts of
 Parliament, yet endeavour to evade them, by alledging,
 that such an Alteration of the Succession can only be made
 by the Authority of an *Hereditary King*, and a lawful
 Parliament, and not by one called by an *Usurper*, or King
de Facto; and that seeing both King *William*, and Queen
Anne, were only such *de Facto* Princes; therefore all Acts
 made by them, whereby the Legal Succession of the next
 Heir has been any ways alter'd, can be of no Force, as

being Enacted by an incompetent Authority,
Vid. the contrary to the true ancient Constitution, as
Second Treat. hath been formerly adjudg'd in that Great
 p. 37, 38. Case of the Entail of the Crown by Act of
 Parliament on *Henry* the IVth, and his

" Issue Male, which was made void in Respect to *Richard*
 " Duke of *York*, who claim'd as next Heir by Blood,
 " by the Parliament of the 39th of *Henry* the VIth,
 " and whose Title is thereby declared not to be de-
 " feated; and which Act was likewise confirm'd by the
 " First of *Edward* the IVth, whereby the said *Henry* is
 " declar'd to have been an *Usurper*, and that King
 " *Edward* the IVth was the only true and lawful Heir
 " of the Crown, upon the Decease of his Father, *Richard*
 " Duke of *York*; and by Virtue of which Act, it ap-
 " pears to have been the Judgments of both those Par-
 " liaments, viz. of the Thirty Ninth of *Henry* the VIth,
 " and First of *Edward* the IVth, that no Act of a
 " Parliament call'd by an *Usurper*, can bar or de-
 " feat the Right of Succession of the next Heir by
 " Blood.

Having

Having recited the Nonjurors chief Argument in the strongest manner I could, I shall now give, I hope, a sufficient Answer to it. First then, I cannot but observe the palpable Inconsistency that shews it self in all these Gentlemen's Notions and Arguments relating to this Dispute: For the Author of the *Hereditary Right*, as well as this Vindicator, do by their Examples from History acknowledge that a mere Usurper, or King *de Facto*, might bequeath the Crown by his last Will to whom he pleas'd, without any precedent or subsequent Consent of the Estates of the Kingdom, or Parliament.

Thus the former of these Gentlemen tells us, That the Danish King, *Harde-Knute*, (whose Father *Knute* had no better Right to the Crown of *England*, than Conquest in an unjust War against King *Vid. Her. Etbelred*, the lawful King) did by his Will *Right*, p. 321 leave the Crown to *Edward* the Confessor, his half Brother, which he could not have enjoy'd by any other Title (except Election;) for he was only Brother by the half Blood to that King, by Queen *Emma* his Mother, last Wife of King *Knute*; to whom *Edward* was no ways related in Blood, as I know of. So likewise King *Edward* himself, who had not any Title as next Heir by Blood (that Right being then in the Children of King *Edmund Ironside* his Elder Brother) bequeath'd the Crown to *William* Duke of *Normandy*, who could no ways lay any Claim to it, as Cousin or next Heir to *Edward*, to whom *William* was only related by Queen *Emma* his Aunt. And then *William* I. who had himself no Hereditary Right, but by Virtue of that Will, disinherited *Robert* his Eldest Son, and bequeath'd the Crown to *William Rufus* the younger Brother; and then *Henry* I. and King *Stephen* (both whom this Writer owns to have been *Usurpers*) bequeath'd the Crown, the one to his Daughter *Maud*, the other to *Henry* Duke of *Normandy*, in Prejudice to his own Son, as has been already related; and after that King *John*, youngest Son to *Henry* II. bequeath'd the Crown to *Henry* III. notwithstanding *Eleanor* of *Bretaigne*, Sister and Heir to Duke *Arthur*, was then alive; and from which *Henry*, all succeeding Kings of *England* derive their Pedigree.

Now since it plainly appears by all these Instances granted by those Authors themselves, and particularly by this whom we have under Consideration, "who acknowledges, that
" Custom

a Custom made the nearest of Blood to succeed, without a
" manifest WILL to the contrary, that for no less
 than Four Successions before the pretended Conquest, and as
 many after it, the suppos'd Right of the next Heir by
 Blood was defeated by those who were only Kings *de Facto*,
 without any other Titles than those *Wills*; and that, as
 they suppose, without any *Recognition*, or Confirmation of
 the Estates of the Kingdom being at all necessary thereunto:
 Now I desire some of these Gentlemen to shew us any suffi-
 cient Reason, why a mere King *de Facto* at this Day, upon
 the same Principles, may not, with the Advice and Consent
 of his Parliament, settle the Reversion of the Crown upon
 whom he shall think fit.

To conclude, if it appear from all these Matters of Fact,
 which they themselves set forth, that an *Hereditary Right*
by Blood was no Part of the Fundamental, or Original
 Constitution, the Crown being for divers Descents enjoy'd,
 without any considerable Disputes, by those who were not
 the next Heirs by Descent; therefore, I say, these Gentle-
 men would do well to shew us, by what Known Law or
 Custom those Parliaments of the 39th of *Henry VI.* and
 first of *Edward IV.* could declare, That by the Law and
 Custom of this Kingdom, the Title of *Richard Duke of*
York, as Heir to the Crown, could no way be defeated: And
 that Parliament of *Edward IV.* to declare him to be law-
 ful King, as Heir to his Father; and *Henry* a Traytor and
 an *Usurper*, for conspiring his Death, and rebelling against
 King *Edward* his lawful Sovereign; when it was very well
 known, that the Crown had been enjoy'd by Three succes-
 sive Kings of the House of *Lancaster*, without any Question
 or Claim made by the Earls of *March*, the suppos'd next
 Heirs by Blood, who all, as likewise *Richard Duke of York*,
 and his Son *Edward*, had taken the Oaths of Allegiance,
 and done Homage to those Three Kings of the House of
Lancaster; which any one would believe, (nay, as the
 Author of the *Hereditary Right* himself confesses) to have
 been it self a sufficient Cession of all their Right and Title
 to the Crown, and a transferring it to the Family of *Hen-*
ry IV. as next Heir Male to *Edward III.*

In the next place, I would ask these Gentlemen, (who
 upon all other Occasions so much vilify, and set at nought
 all Authority of the Estates, when assembled without a
 lawful King,) how, upon their Principles, a Parliament
 sum-

summon'd in the Name of an *Usurper*, or King *de Facto*, (such as they suppose King *Henry VI.* then to be) could lawfully assume any Authority of judging, or giving Sentence, concerning so high a Point as the Right to the Crown, whether it was in him upon the Throne, or in the Duke of *York*, who laid Claim to it as next Heir by Blood?

But if to evade this, they will answer (as Dr. *Brady* does) that the Parliament did not pass this Sentence in Favour of the Duke of *York*, as Judges in their Legislative Capacity, but only as Arbitrators voluntarily agreed on by that King and Duke, to decide to whom the true Right of the Crown did then belong. Now this is directly contrary to the Matter of Fact, as appears by the Copy of the Record publish'd by the Author Vid. *Append.* of the *Hereditary Right*; whereby it appears, "That the Duke of *York* first applied

"himself to the Lords by way of Petition, to consider and
 "give Judgment in his Case; which they declined to do
 "without the King's Leave. This being obtain'd (for the
 "King durst not refuse it, seeing he was then in the Duke's
 "Power) they proceeded to give Sentence to this Effect;
 "That tho' the Duke's Title could no ways be defeated, yet
 "by Reason of the King's long Possession of the Throne,
 "and the Oaths of Allegiance which they (the Lords) as
 "well as the Duke himself, had taken to King *Henry VI.*
 "they agreed, that he should hold and enjoy the Crown
 "during his natural Life, and then it should descend to the
 "Duke and his Issue. Which Sentence appears not to be
 given by them merely as Arbitrators, by this unanswerable
 Proof, that it was drawn up by way of Bill, and sent down
 to the Commons; and when passed by them, was immediately
 made an Act, by having the outward Consent of the
 King then Regnant, tho' declar'd by them to be only King
de Facto, without any Hereditary Right. So that nothing
 can be plainer, than that the Parliament acted in that Case
 as Judges, and not as mere Arbitrators.

But to comply with these Men as much as possible, I will for once allow, that the Lords (for it was to them alone at first, that the Duke appeal'd) did not take upon them to act in this Case, otherwise than as Arbitrators indifferently agreed upon between the King and the Duke to decide this Controversy; and that the Commons Consent was made use of, not as Judges, but only (for a better Colour) to corroborate

roborate and confirm the Judgment of the Lords, as the sole Arbitrators: But if this be granted, it can do the Cause little Service; for King *Henry* being at that Time a Prisoner under the Power of the Duke of *York*, might very well, when he obtain'd his Liberty, have pleaded (as his Queen and Son did on his Behalf) that the Sentence of the Lords as Arbitrators was wholly void; as also the King's Summoning of them to that Parliament, and their Consent to what had been done since the Time he was under Confinement, and consequently under that Force, whatsoever he did, was extorted from him by Duress, and could no ways bind him, much less his Son and Heir, who was by this Sentence disinherited of the Succession to the Crown; and therefore if the King his Father had given his Consent never so willingly to that Award, yet it could not bind him, who was no ways privy thereunto; especially if it was no Act of Parliament, as these Writers will needs have it, then all the Consequences they would draw from this remarkable Judgment of the Lords, will signify little as to make any Precedent for the Time to come, if the Lords in this great Cause acted only as private Arbitrators, and not in their Publick or Legislative Capacity; and therefore it could bind no body, but those who then submitted to their Arbitrament. But whether this Act of the Thirty Ninth of *Henry* the VIth, was good in Law, it matters not much, since not long after, (for it was in this very Year, so soon as Queen *Margaret* had obtain'd that remarkable Victory over the Duke of *York*, at the Battle of *Wakefield*, wherein he and divers of his Party were slain,) a Parliament was held at *Coventry*, wherein not only all the late Proceedings of the Parliament at *Westminster* were revoked, as being done whilst the King was a Prisoner, and without his free Consent; but also the late Duke of *York*, and the Lord *Edward* his Son, (afterwards King) were attainted of High-Treason, for taking up Arms, and rebelling against King *Henry*, their lawful Sovereign.

But if these Wranglers (for they are not fair Disputants) shall still object from the Author of *Hereditary Right*, and other Pamphlets, the Acts made in this Parliament at *Coventry*, and say, "That it was not lawful, because sum-
 "mon'd by an Usurper, and that they therein attainted the
 "lawful

" lawful Heir to the Crown ; as also because it was called,
 " when the lawful Heir durst not appear to claim his Right,
 " but yet not long after asserted it by fighting with that
 " King's Army, at the Battel of *Wakefield*, and forced him
 " and his Queen to fly into *Scotland* ; so that *Edward*
 " finding none durst oppose him, he then took the Title of
 " King of *England* upon him, and summon'd a Parliament,
 " which recogniz'd his just Title to the Crown, as next un-
 " doubted Heir by Blood ; and also attainted King *Henry*
 " the VIth, and his Queen *Margaret*, for the Reasons
 " before related. And since that Time, it has been always
 " own'd as a Fundamental and unalterable Law, that the
 " next Heir, though descended from a Female, should
 " succeed before an Heir-Male begotten by a younger Bro-
 " ther, or Son of the King deceased ; and that such an in-
 " defeasible Right, no *Will* nor *Testament* of any King, tho'
 " confirm'd by Act of Parliament, can set aside or defeat ;
 " and they suppose this appears by the famous Instance of
 " the last Will of *Henry* the VIIIth, which though duly
 " executed and acknowledg'd for good in all other Respects,
 " yet as to the Entail of the Crown upon the next Heir
 " of his younger Sister the Queen of *France*, in Prejudice
 " to his Elder the Queen of *Scots*, and her Issue, it was
 " never allow'd for good either by Queen *Mary* or Queen
 " *Elizabeth*, who upon her Death-Bed declar'd the King
 " of *Scotland*, who was next Heir by Blood, to be her
 " Successor ; which undoubted Hereditary Right was like-
 " wise acknowledg'd by that King's first Parliament, as is
 " manifest by their Act, which was accepted and confirm'd
 " by the King in the Words as there set down in the Pre-
 " face.

Having fairly recited the chief Arguments made use of
 by the Author of the *Hereditary Right*, for the indefeasi-
 ble Succession of the next Heir by Blood, I shall now return
 a brief Answer to them, since it has never been done as it
 ought, by any of those who have attempted the taking up
 the Cudgels against him.

First then, as to the Act made at *Coventry*, its not being
 valid in Law, because that Parliament was summon'd by an
Usurper, who thereby attainted the lawful Heir to the
 Crown when he durst not appear to make good his Right

to it: This Objection (if it signifies any Thing) does alike make void that very Act of the 39th of *Henry* the VIth, whereby the Duke of *York's* Title was declared not to be defeated by any former Act of Parliament; for the same King passed both those Bills, and the Parliament at *Coventry* was as legally chosen as that before at *Westminster*; and as for the Sentence of the Lords, if they did not therein act in their Legislative Capacity, that could neither oblige *Henry* the VIth, nor his Successors. And for the last Part of this Objection, if this is to be admitted for a sufficient Reason against the Proceedings of that Parliament at *Coventry*, the same may be likewise urged against the Precedent Parliament at *Westminster*, as being summon'd against the King's Consent, when he was under Restraint, and neither his Queen, nor the Prince his Son and Heir, nor any of the Temporal Lords of his Party, durst appear there to vindicate the Right of their Sovereign: So that if the latter Parliament was summon'd without the Consent of the rightful King, so was the other likewise; though *Henry* the VIth was at that very Time acknowledged by both Houses of Parliament for their Lawful Sovereign, as may appear from all the whole Proceedings of that Parliament, publish'd from the Original Record.

Secondly, As to the Repeal of the *Coventry*-Act by the 1. *Edward* IV. I allow it: But King *Edward's* Title did not chiefly depend upon that Act of Recognition of this Parliament, but rather upon the former Act, *See the Act of 1. Edw. IV. Cap. 1.* that was made in Confirmation of that Sentence of the Lords above-mentioned of 39. of *Henry* VI. and further recites the Agreement then concluded between that King and the Duke of *York*, Father to *Edward* IV. and how upon the Breach of that Agreement by Queen *Margaret*, in making War upon, and killing the next Heir of the Crown, King *Henry* had thereby not only forfeited all his present Right to it for Life, but was also guilty of Treason in conspiring his Death.

Now it is evident, that if that Agreement was void, as being never lawfully made, then this Act of 1. of *Edward* IV. being founded on that Agreement, must be void too. Besides, it is plain that King *Henry* was unjustly attainted for conspiring the Death of the Duke, then declar'd next Heir
to

to the Crown ; for it was impossible that the King, who still continued (little less than) a Prisoner at *London* under the Power of the Duke's Party, could be guilty of joining with his Queen, in conspiring the Death of that Duke, who was slain 200 Miles off in *Yorkshire*.

So that whoever will take the Pains to consult the History of those Times, must find, that King *Edward's* Right to the Throne, and speedy Accession to it, was in a great Measure owing to his good Success over *Henry VI.* and consequently the Deposition of that unfortunate Prince, was the necessary Effect of it ; as being much the same with that of *Henry IV.* over *Richard II.* which was the Cause of his Deposition by a like Act of Parliament ; so that though *Henry IV.* and *Edward* did both claim the Crown by an Hereditary Right in Blood, yet they did both make use of the same unlawful Means for the obtaining it ; viz. An Armed Power and Rebellion against those very Kings, whom they themselves, by their doing Homage, and swearing Allegiance to them, had own'd for their lawful Sovereigns, and on which alone they would not however depend ; and therefore wanted to have their Titles acknowledged and settled by Acts of Parliament.

But I am sensible our Adversaries will here be ready to reply, That this Comparison between *Henry IV.* and *Edward IV.* their Accession to the Throne, will not hold good ; because the former was a meer Usurper, (without any true *Hereditary Right*) upon the Earl of *March* the right Heir to the Crown ; whereas *Edward* claim'd by a precedent Title from that very Family ; and therefore having such an undoubted indefeasible Title, he was, as well as the Duke his Father, free to recover it whenever he could, although by Force ; since no Time, nor any Law, can bar the true Heirs of their just Right.

Now all this is *gratis dictum*, or a downright begging the Point in Question. For, First, They cannot prove, that this suppos'd indefeasible Right of the next Heir had ever been settled before, either by any written Laws, or by Custom ; not the former, since there was no such Law then in being ; nor the latter, for it plainly appears, besides *Edward* the Confessor before the Conquest, of the Eight Kings, who afterwards successively enjoy'd the Crown, from *William I.* to *Edward I.* no less than Seven of them could not claim as next Heirs by Blood ; which can easily be prov'd, and

and is in part granted by the Vindicator himself. And sure no body can be so stupid as to believe upon their bare Words, *That an Hereditary Heir by Will, and an Hereditary Heir by Blood, are both one and the same Thing* : For if so, I would fain know, Why in that Sense an Heir appointed by Act of Parliament, may not as well come under the like Denomination ? Unless they can prove, that the last Act of the King Regnant, when he is dying, shall be of more Force, than that of a King in perfect Health, ratified by the Consent of the Representatives of the whole Nation in Parliament.

And as for the Right of a Female to succeed, as was suppos'd to be own'd by the whole Nation, in their swearing Allegiance to *Maud* the Empress, that was again alter'd upon the Death of *Edward I.* when the Estates of the Realm revoked that Settlement, and elected *Stephen* Earl of *Blois* for their King ; against whose Title, whatsoever Disputes have been rais'd by others, this Antagonist I am sure ought not to make any such Exception ; since it plainly appears, by the Agreement he himself recites to have been made between that King, and Duke *Henry*, his Competitor, he own'd *Stephen's* Title for good, or else the Charter he there gives us, whereby *Stephen* (without any Intervention of a Parliament) appointed *Henry* to succeed him, before his Son, would be of no force at all ; and therefore by thus owning the Title of that *Usurper*, he must have implicitly yielded up that by which he claim'd from the Empress his Mother.

I shall now say somewhat more in defence of the Title of the House of *Lancaster*, in Answer to what has been already alledged in Favour of the Earl of *March's* Claim to the Crown by an indefeasible Title. Now if this Title can be prov'd to have been given up both by him and the Duke of *York* his Father, then they could neither of them after that, justly lay any Claim to the Crown ; but that they both did this by their so often doing Homage, and swearing Allegiance to King *Henry VI.* is granted

P. 34, 35, 61. by the Author of the *Hereditary Right*, &c. since in all other Cases of next Heirs to the Crown, who had been set aside, as *Edgar Atheling*, and *Arthur* Duke of *Bretaigne*, he owns, that their swearing Fealty and doing Homage to *William I.* and King *John*, as to their lawful Sovereigns, was an implicit Renunciation of their

their own Right to the Crown; and why both that Duke and his Son, who had made the like Acknowledgment to *Henry* the VIth, should have a greater Privilege, or a more indefeasible Right than others in the same Case, I desire either that Author, or his Pupils, would give a sufficient Reason.

From all which it is evident, that if that Act of Parliament, pursuant to the Sentence or Arbitrament of the House of Lords, (let them call it how they please) *That the Title of the Duke of York could not be defeated*, was not good in Law, nor valid, for the Reasons already recited, then that Duke's, and his Son's taking up Arms, and claiming the Crown against the right Heir of that Family which enjoyed it for above Sixty Years, was indeed to make themselves Judges and Parties in their own Cause; and that too, contrary to their own Concessions, by which they had implicitly renounced all the Right they could pretend to it; since neither they, nor those under whom they claim'd, could with any Colour of Justice plead that they had been any ways forced to do that Homage, or take those Oaths of Allegiance to those Three Kings of the House of *Lancaster*. And though when *Edward* the IVth's Title was Recogniz'd by that Act of Parliament, they were stiled Kings *de Facto*, i. e. in Deed, and not of Right, yet this was the first Time that ever such an opprobrious Term had been given to any King of *England*: For till then, whoever was in actual Possession of the Throne, and had been recogniz'd by the Estates in Parliament, had always been reputed lawful King, without any Competitor's offering (unless they had the like Consent) to assume that Title; as appears by the Empress herself, who was never stiled in her Charters any more than *Domina*, and not *Regina Anglorum*, as the Author of the *Hereditary Right* acknowledges: And if both those Titles had been of like Dignity and Significancy, she might more easily have stiled her self *Regina Romanorum & Anglorum*, than have put the former upon one Side of her Great Seal, and only *Domina Anglorum* upon the other.

What has been here set forth, I think, may be sufficient to satisfy any indifferent Reader, that the Title of the House of *York* to the Crown, was owing to the
the

the Favour of some of the Chief Nobility, and Commons, who out of Hatred to the Queen and her Favourites, whose Male Administration was the Cause of the Loss of almost all the Dominions abroad, and their oppressive and partial Government at Home, under a Pious, but weak Prince, gave the Chief, and first Occasion for the People to wish for a Change, rather than to a settled or known Right of Succession in that Family, which till the Nation was under a general Ferment of Discontent, never durst make any Claim to the Crown.

But I shall now further consider this remarkable Act of the First of *Edward* the IVth, "Wherein that King "was not only declared by God's Law, and the Law of "Nature, to be their Rightful, Natural Sovereign Lord, "but they also engaged themselves to live and die with "him in Defence of his Title; and then they proceeded "to settle the Crown in him, and his Right Heirs for "ever; which surely was as strong a Settlement as could "be possibly invented, and as effectual as that which "the Parliament made by their Act of Recognition of King *James's* Title to the Crown, so much insisted on by these Gentlemen. But that this Settlement was of no very long Continuance, will appear from the Act of Recognition made by the Parliament in the

Rot. Parl. beginning of *Richard* the III'd's Reign;
1 Rich. 3. "wherein having first declared all the Issue
N. 1, 2. "both Male and Female, of the late King
"Edward, to be Illegitimate, they proceed
 "to declare, by the inherent Authority of the Three
 "Estates of Parliament, that their present King *Richard*
 "is rightful and undoubted King of this Realm; and
 "after his Decease, Prince *Edward* his Son to be his un-
 "doubted Heir and Successor, or any other Heirs of the
 "King's Body, lawfully begotten: Which Settlement, had
 it not been hindred, and alter'd by the prevailing Power
 of *Henry* the VIIth, might have continued the Crown in
 his Family to this Day, for ought we know.

In the next Place I shall shew, that both these Acts, viz
 of *Edward* the IVth, and *Richard* the III'd, were as good
 as

as reversed by that Act of the First of *Henry* the VIIth, "Whereby the just Right to *Rot. Parl.*
 " the Crown is declared to be in that *1 Hen. 7.*
 " King: And it is further settled on the *N. 1.*
 " Heirs of his Body by any Wife, with-
 " out mentioning the Title of the Princess *Elizabeth*,
 " Eldest Daughter to King *Edward* the IVth, (the then
 " suppos'd Heir apparent to the Crown) whom he did
 not marry until near half a Year after his Accession
 to the Throne, and whose Right to it he would never
 acknowledge, or prefer before his own, as being the sup-
 posed Heir of the House of *Lancaster*, whose Right he
 again reviv'd, and asserted by another Act unprinted, which
 passed at the same Time; "Whereby the Act of At-
 " tainder of the late King *Henry* the VIth, by the First
 " of *Edward* the IVth, is reversed, as being done con-
 " trary to *due Allegiance*, and all Order, &c. And
 if contrary to *Allegiance*, then his *Deposition* by that Act
 of *Edward* the IVth is likewise condemn'd; that being
 done much more against their Allegiance, than their
 attainting him, after he was by them declar'd not to be
 their lawful Sovereign. So that both these Acts, though
 not published in our Printed Statute-Books; yet being ex-
 tant on the Parliament-Rolls, and never revers'd, are still
 of the same Force and Validity, as when they were first
 made.

Nor is it any just Exception to say, That these Acts were
 passed before *Henry* the VIIth was married to that Princess,
 from whom alone he could derive any just Title to the
 Crown, he himself being descended from a Natural Son
 of *John* of *Gaunt*, who was expressly disabled in the very
 Charter of Legitimation of his Issue by *Catharine Swinford*,
 (which was confirm'd by Parliament) from succeeding to
 the Crown, and so could not as Right Heir of the House
 of *Lancaster*, lay any Claim to it.

But in Answer to this, I am so far from denying the
 Matter of Fact, that I think it rather makes for, and serves
 to strengthen my Argument, as shall be further made out
 before I have done. But as for their Exception against
 these Acts, of their not being good for the Reason there
 given, this I deny; for the Validity of those Acts has never
 been called in Question, till now of late; and therefore
 they may deny the Legality of all the rest of the Acts
 made

made in that Parliament of the First of *Henry* the VIIth, (which were not a few) as well as these Two; which no Judges nor Lawyers have ever yet done, as we can find, from any Cases extant in those Ancient Collections, call'd *Year-Books*, nor yet in any of the more modern Reports.

But if King *Henry* the VIIth's Title to the Crown only commenc'd from his Marriage with that Princess, then it must have likewise ceased upon her Death, which was above Five Years before that of the King her Husband; and yet we see he still acted as King in his own Right, to the Time of his Decease, as much as he had done before; and held a Parliament in the Nineteenth Year of his Reign, wherein were several Acts passed, that are to be found in our Statute-Books, and have been ever since receiv'd for good Laws, without any subsequent Confirmation by any other King.

Now the Consequences I shall draw from these Two Precedents are these; First, That ever since the Repeal of that Act of the First of *Edward* the IVth, it has been held for good Law, that Acts of Parliament, though made by or under Kings *de Facto*, such as *Richard* the IIIrd, and *Henry* the VIIth are owned to be, could, nay, did actually alter and divert the common Legal Succession of the Crown from the next Heirs of the last, and settle it on the present King, and his Issue, by any Wife; and if these were held good in the Case of *Richard* the IIIrd, and *Henry* the VIIth, I desire they would give us any tolerable Reason, why the like Act of Settlement upon the Princess *Sophia*, and her Issue, though passed in a Parliament held by a King *de Facto*, and confirm'd by a Queen, who had no better a Title, should not be of the same Force and Effect, as those Acts of *Richard* the IIIrd, and *Henry* the VIIth; since it is a Maxim in our Law, *That the Supreme Power can never limit, or oblige it self so, as not to alter any Law it had at first lawful Authority to make.*

But though they shall still urge the famous Instance of King *Henry* the VIIIth, who was empowered by Act of Parliament, to Entail the Crown upon whom he pleased, either by his *last Will*, or *Letters Patents*, after the Failure of his own Issue, on whom the Crown was thereby expressly settled by Name; yet this Will, as relating to the Succession

Stat. 25th.

Hen. 8.

cession of the Heirs of the House of *Suffolk*, before those of the Family of *Scotland*, was never admitted for good, even by Queen *Elizabeth* her self, as much an Enemy as she was to her Cousin *Mary* Queen of *Scots*, her Competitor.

To this I say, that if this Will were to be admitted for good, then according to these Gentlemens own Instances of the Power of former Kings to bequeath the Crown by their Wills, the Line of *Scotland* ought to have been excluded, unless they can give any sufficient Reason why *Henry* the VIIIth, with the Consent of his Parliament, should not have as much Authority to dispose of the Succession, as any of those Kings had without it. But indeed it must be granted, that if the Power given to King *Henry* so to dispose of the Crown by Will, had been duly and strictly pursu'd, according to the express Words and Intent of that Act, I cannot see any Reason why it should not have been held good in Law, nor why the Earl of *Hertford* as next Heir of the House of *Suffolk*, should not have succeeded before King *James* the Ist. So on the other Hand, if the Power given to that King by this Act, was not duly executed, then that Will, with respect to the Succession of the Crown, was wholly void, and of none Effect. Now that it was not so executed, may appear from the very Words of that Act, which require, that as by his Letters Patents under the Great-Seal, the King might Entail the Crown on whom he thought fit, yet it was to be under the Great, and not the *Privy-Seal*: So likewise, if he thought it better to make such a Settlement by Will, it was to be Subscribed by his Highness's *Sign Manual*, in the Presence of sufficient Witnesses. Now by *Sign Manual*, that the Statute intended the King's own Hand-Writing, and not a Stamp of his Name, I think no body can doubt. For who would ever call his Stamp, his *Sign Manual*, that understands the Propriety of our Language? Now that it was Sign'd with his Stamp, and not his own Hand, was an Objection made against it long ago, even in the Reign of Queen *Elizabeth*, as appears by Secretary *Lethington*'s Letter to Sir *William Cecil*, wherein he appeals to him for the Truth of it. And though that Secretary might carry the Matter perhaps too far, in affirming that the King's Stamp was

put to the said Will, when he lay Speechless, and was not of sound Memory; yet however, supposing the King had put his Stamp to it with his own Hand, when he was of *sane* Memory, that *Will* would not have been good, as to that Part of it relating to the Entail of the Crown. For since on the Validity of that *Will*, so great a Matter as the Succession of the Crown depended, by which the next Heirs by Blood were to be disinherited, the Act of Parliament that gave the King that Power, ought to have been strictly pursu'd, and executed according to the literal Sense thereof, and not otherwise. And surely there is no Man so void of Understanding, as will say, that it is all one for a Man to write, or to stamp his Name to a Deed, or Will, since this last may be done by one that can neither Write nor Read; and besides, a Stamp is more capable of being counterfeited, or clapp'd to any forged Deed, or Will, after the Death of the Party, or when he is *Non Compos Mentis*, and in the last Agonies of Death: Therefore it was not without good Reason, that the Act of Parliament required the said Will to be Sign'd by the King's own *Hand-Writing*.

But since to this grand Objection, the
 Page 195, Author of the *Hereditary Right* under-
 196. takes to give Two Answers, I shall first repeat, and then reply to them. The First is, "That it cannot well be thought the Intention of those Acts was to restrain the King from Signing his Will with his Stamp: And Secondly, That the Law looks upon any Thing that is Sign'd with the King's Stamp, as of equal Authority with that which is Sign'd with his Hand."

Now to the First Answer, I say, This is a meer begging of the Question; for I have already prov'd, that the Powers given by an Act of Parliament for the doing a Thing, either by the King, or any other Person, ought to be strictly and literally pursu'd, especially in so nice a Point as this, of disinheriting the next Heirs to the Crown.

Neither

Neither will this Author's Observation as to this King's Manner of Signing Council-Books; as also a great Number of Commissions and Warrants of the Thirty Third and Thirty Fourth Years of his Reign, make for, but rather against the Validity of this *Will*, if it were Sign'd with a Stamp, and not with his own Hand-Writing. For since this was a Thing known to be then by him commonly practis'd, it is a plain Sign, that the Drawers up of this Act intended to restrain him from using the like Liberty in Signing his *Will*, by which he was impower'd to dispose of the Crown; or else for what Reason did it so expressly appoint, that his *Will* should be Sign'd with *his Sign Manual*, when they might have as easily inserted these Words, *or with a Stamp, containing the Letters of his Highness's Name*, if the Parliament had not so warded it on Purpose to prevent any Fraud or Forgery, that might afterwards be us'd, in putting such a Stamp to the King's *Will*, either without *his* Knowledge, or when he lay Speechless, as it was afterwards said to have been done by one *William Clark*, without the King's Order? And therefore how lawful soever it might be esteem'd, as to other more ordinary Matters, yet it ought not to be taken so in this Case, wherein he was particularly restrain'd from doing it in any other manner than the Statute it self expressly required. But that even a subsequent Parliament did not think the King's Signing with his Stamp to be of the same Validity, as writing with his Hand, appears by an Instance, which the Author of the *Hereditary Right* has himself furnish'd us with, both from *Dyer's Reports*, and the Journals of Parliament of the First of *Queen Mary*, in which the Attainder of the Duke of *Norfolk* was reversed by that Parliament, for this Reason (among others) because the Commission by which the Bill of *Attainder* was pass'd, was Sign'd with the King's Stamp, and not his own Hand the Day before he deceas'd, whereas the Act of Parliament of the Thirty Third Year of his Reign, which enabled him to pass such Acts by Commission, says expressly, that such Commission should be Sign'd *with his Hand*.

So that it is evident, that this Parliament was of Opinion, that a Commission Sign'd with his Stamp was not of the same Validity, as if it had been Sign'd with the King's Hand: Nor will what this Author there alledges to the contrary, prove the Law to have been otherwise since that Time; by the Instance he brings of the Act for the Oath of *Abjuration*, and that for the *Malt-Tax*, both which (if he mistakes not) were passed by a Commission Sign'd only with King *William's* Stamp the Day before he dy'd.

I need say no more to this, than that, First, The Author himself is not certain of the Matter of Fact, as appears by his inserting this Parenthesis, (*if I am not mistaken*) and therefore I may say he is so, 'till the contrary be made out. Secondly, As for his calling this *a later, and remarkable Judgment given in Parliament, which may justly be thought sufficient to determine the Controversy*: This is only made use of as *Argumentum ad Hominem*: For since he does suppose that King to have been no more than a King *de Facto*, and consequently no better than an *Usurper*, he cannot make use of it as a Rule how this Matter was understood in former Parliaments. But besides, there was no such Judgment given at all in this Case, no body then questioning, or enquiring into the Commission by which those Acts passed, whether it was Sign'd with a Stamp, or with King *William's* own Hand; and the Parliament having never been at all appriz'd of that Matter, could not determine any Thing concerning it. Lastly, Suppose it so, yet the Case of *Henry the VIIIth*, and King *William's* Signing with a Stamp, were very different; the former having been restrain'd by the very Words of Two Acts of Parliament to Sign with his own Hand; and when this Author can shew me the like Restraint was laid upon King *William* by any Act, I will then own it would have been void; but if not, I must so far agree with him, that in all other Cases where there was no such Restraint put, any Thing truly Sign'd by the King with his Stamp, is of equal Authority with that which is Sign'd with his Hand.

And

And this will serve to answer another main Argument made use of by that Author, to prove the Validity of King *Henry* the VIIIth's Will, that it was admitted for good by King *Edward*'s Privy Counsellors, as also by all King *Henry*'s Executors, and executed accordingly, as to all the most material Parts of it; and was likewise thought valid by Archbishop *Cranmer* as to the Succession of the Crown it self; since the main Reason, why he at first refused to agree to the Letters-Patents of *Edward* VI. whereby he dispos'd of the Crown to the Lady *Jane Grey*, under the Great Seal, to the disinheriting of both his Sisters, was, because it was contrary to King *Henry*'s last Will, by which he further confirm'd the Succession of the Crown to them. Now to this it may be very well reply'd, that it was at that Time thought to be for the Honour of King *Henry*'s Memory, as also for the private Interest of the Executors themselves, that this Will should stand good, because each of them, by Virtue thereof, was to receive a considerable Legacy; and therefore it was not strange for them to admit the Will for good, without ever examining into the manner how it had been executed, or whether it had been sign'd with his Sign-Manual as the Act enjoin'd, or only with his Stamp. But besides this, the Will so sign'd as it was, being witnessed by so many Persons of considerable Note, and Nearness about the King's Person, was a good Nuncupative Will, so far as only concern'd the King's real and personal Estate, out of which the greatest Part of those charitable Endowments appointed thereby for the good of his Soul were to be rais'd, and discharged: So that the Will might be good as to all Matters that were therein appointed to be done by the Executors, and yet void as to the latter Part of it, relating to the *Entail* of the Reversion of the Crown; about which, neither the Privy Council, nor the Executors were any ways concern'd; but that this Will was not looked upon as valid in Queen *Mary*'s Reign, appears by this, that it was by her Order taken off the File of the Rolls in *Chancery*, where it was order'd to be entred on Record: So that the Original Will not being then commonly known where it was to be found, there were only some Copies of it, commonly dispersed in Queen's *Mary*'s and Queen *Elizabeth*'s Reigns.

But

But as for Archbishop *Cranmer's* Objection against King *Edward* the VIth his disposing of the Crown by his Letters-Patents, it must certainly refer to the *Will* as it stood confirm'd by Act of Parliament, and no other-wise: For else why should not King *Edward* have the like Power to dispose of the Crown by such Letters-Patents, as his Father had, if the Act of Parliament that gave him that Power, had not restrain'd him as to the Manner of executing it? Therefore the Archbishop's Judgment in this Case, cannot make much either one way or other, since he (not being a Lawyer) was not a competent Judge of the Validity of this *Will*, any farther than as it concern'd himself as Privy-Counsellor, and therein first named of all the King's Executors, and not as to the *Entail* of the Crown, which was sufficiently secur'd to that King's Daughters by the Statutes of the Twenty Eighth, as well as Thirty Fifth Years of his Reign. So that by Virtue thereof, they were to have succeeded to the Crown, whether the King had deceas'd without making any *Will* at all, or had omitted to mention them in it.

To conclude this Question, there is no more to be done to decide it, but to have Recourse to the *Original Will* which is still preserv'd in the Treasury of the *Exchequer*, to see whether it appears to be indeed Sign'd with that King's *Sign-Manual*, or with his *Hereditary Stamp*. If the Author of the *Hereditary Right*, p. 208. *Right's* Informers may be credited, it was Sign'd with his own *Hand-Writing*; and they pretend to give some shrewd Tokens from the Form of the Letters, that it was Sign'd by a *weak and trembling Hand*: But on the other Side, am likewise assur'd, by as good or better Judges than this Author can bring, that it was Sign'd with a *Stamp* the Letters being all of one equal Form and Bigness and agree with the same or like Stamp, which is found prefix'd before several Orders of Council enter'd in the Council-Books of the Thirty Third and following Years of that King's Reign; when either because of the Weak-

ness of his Hand, or to save himself the Trouble of Signing them with his own Hand, he rather chose to do it with a Stamp.

If therefore the Validity of this Will, as to the Entail of the Crown, is so far from being established; that it is rather utterly void; what the above-cited Author would thence infer, that it will inevitably follow (if that Will were good) viz. That King James the 1st ascended the Throne of *Ibid.* p. 208. England directly contrary to the Order of Succession appointed by several Acts of Parliament, viz. the Thirty Fifth of Henry the VIIth, the First of Edward the VIth, Chap. 12. 1 Elizabeth, Chap. 3. Now this is not so; for though the First of these Acts gives the King a Power to dispose of the Reversion of the Crown by his Letters-Patents, or last Will in Writing, yet it likewise appoints in what manner those Letters-Patents, and that Will should be executed; viz. The one under his Great-Seal, and the other to be Sign'd with his Sign-Manual. And as such Letters-Patents would have been void, if they had passed only by the Privy-Seal: So that Will was so far void, because it was Sign'd otherwise than that Act directed. And as for the Two last Statutes, they are nothing to his Purpose; for although it is provided by the Act of Edward the VIth, "That it shall be High-Treason for any Persons that are declared Heirs of the Crown by Authority of a Parliament, by an Act of the Thirty Third of the late King Henry, to usurp the Crown the one upon the other, or to challenge the same, otherwise than as is limited and appointed by the said Statute; yet since it wholly refers to it, this Act of Edward the VIth could only affect those that were so limited and appointed to succeed, by Virtue of that Act, and not reach to such to whom the Crown was not so limited, and consequently could not affect the Issue of either of that King's Sisters; because as to the Entail of the Crown, the Issue of his elder Sister was wholly omitted out of that Will: And as to the Entail upon those by the younger Sister, in Prejudice of the former, the Will was void, for the Reason already

already given, and consequently could no ways affect them. And so likewise as to Queen *Elizabeth*, though her Father's Will is there recited, yet the Parliament did not think fit wholly to found her Title upon that Act of the Thirty Fifth of *Henry the VIIIth*, but first recognized her in Words to this Effect, *viz.* " That your Majesty is our rightful and lawful Sovereign Lady " and Queen, and that your Highness is lineally and " lawfully descended, and come of the Blood-Royal of " *England*, in and to whose Princely Person, and the " Heirs of your Body after you, without all Doubt and " Ambiguity, &c. the Imperial Crown of this Realm, " &c. are and shall be most fully and rightfully invested, " and united, as they were in the late Kings *Henry the " VIIIth*, and *Edward the VIth*, &c.

Ibid. 210. So that what the same Author so expressly asserts; *viz.* That King James I. succeeded contrary to several Acts of Parliament, by which he was expressly excluded, is not true; because there is no such Act in being, whereby the Issue of King *Henry's* Eldest Sister are disinherited; for those Acts, whereby he was empower'd to dispose of the Reversion of the Crown, could not exclude them, since the Parliament left it in that King's Power to entail the Crown on whom he pleas'd, upon the Failure of his own Issue.

And as for what he says in Commendation of Queen *Elizabeth*, that she in her Life-time promised, and her Privy Council after her Decease effected this Succession of King *James the Ist*, notwithstanding his being so excluded, and consequently (though he dares not speak it out) that no such Act ought for the same Reason to be admitted as valid, whereby the next Heir by Blood is so excluded; this is manifestly false, since it must rather have proceeded from this Queen's and her Council's looking upon that Will to be of no Validity, for the Reason already given; upon which Account she discouraged the Claim of the House of *Sussex* to the Crown, whose Title depended wholly upon the Validity of that Will. But that Queen *Elizabeth* and

and her Council were not moved to declare the King of Scots next Heir to the Crown upon that Consideration, in which that Author places it, appears by what he himself is forced to confess, That this Queen in the Thirteenth Year of her Reign (being then jealous of the Queen of Scots Succession to the Crown, as that which might occasion her own Death or Deposition) made an Act, whereby it was declared *High Treason* during her Life, and Forfeiture of all Goods and Chattells after her Decease, for any one to affirm, That "she and her Two Houses of Parliament, could not make "Laws of sufficient Force and Validity, to bind and "limit the Descent and Inheritance of the Crown: Now can any one believe, that she made that Law only in Jest; and that if the Queen of Scots had ever obtain'd her Liberty, and gone about to disturb her Title, that she would not have put this Act in further Execution, by confirming her Father's Will, and declaring the Right to be in the House of *Suffolk*, though descended from the younger Sister? The like may be said as to King *James*, supposing he had turn'd Papist, and had declar'd himself as much an Enemy to that Queen, and her Religion, as his Mother had done: Can any body believe that she would not immediately have passed an Act against his Succession? So that his coming to the Crown so quietly as he did, was chiefly owing to that Deference and Respect he gave her towards her latter End, and especially that Agreement in Religion between the Two Nations of *England* and *Scotland*, though our Church was settled under Episcopacy, as theirs was under Presbytery. And therefore though I grant, with this Author, that the *Queen had the Interest of her Country very much at Heart, when upon her Death-Bed she declar'd her next Kinsman, the King of Scots, to be her Heir*: So if she had thought it not to have been for the Publick Good of her Country, and the Preservation of the *Protestant* Religion by her first settled, as of any Continuance; she would have exerted her Prerogative, and made some other than the *Stuart* Family capable of succeeding to the Throne. Therefore there is no Argument to be drawn from her not doing it, that it

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was

was not in her Power to set aside the next Heir by Blood; or that she must have thought her Father's Will to have been of no Force as to this important Matter. And if Queen *Elizabeth*, who had no Title to the Crown, save what she derived from an Act of Parliament, could have done this, and that it would have been good in Law, I desire these Gentlemen would tell us why King *William* and Queen *Anne*, who certainly had the like Titles, should not have the same Power to put in Execution the disposing of the Succession in the manner they did, according to the Purport of that Act of the Thirteenth of Queen *Elizabeth*.

As for what follows in this Writer, *Page 37*. " against
 " the Title of Kings *de Facto*, and that they are de-
 " clar'd by Law to be all Traytors with Imperial
 " Crowns, and all the Rights and Privileges of Kings
 " *de Jure*: I need say nothing in Answer to all that he
 has there maliciously asserted, since the late Reverend
 and Learned Dr. *Higden* has in his Two Treatises, call'd
The View of the English Constitution, and his *Defence*
of it, proved both from our Ancient Histories, and Law-
 Books:

First, That there was never any such Thing known in *England*, as an Indefeasible Right to the Crown, that no Act of Parliament could bar, or take it away, till those Acts of the Thirty Ninth of *Henry* the VIth, and First of *Edward* the IVth; both which are now revoked and made void by several Acts of Parliament since that Time.

Secondly, That the Kings *de Facto* have been always looked upon as the only lawful Kings, during their Reigns; and that even those Kings *de Jure*, that disown'd their Titles, yet acknowledged the Validity of their Laws; which have still continued of like Force with those made by Kings *de Jure*, unless such as were thought fit to be repeal'd.

Thirdly,

Thirdly, That therefore Possession of the Crown, according to the Ancient Constitution, takes off all Defects; as was adjudg'd by all the Judges in the Persons of " King *Henry* the VIIth, and Queen *Elizabeth*; and that " by the Eleventh of *Henry* the VIIth, the King for the Time being, is to be fought for, and assisted, in his " Wars both against Foreign Enemies, and Domestick Rebels, as being him alone to whom Allegiance is justly " due, and against whom alone Treason can be committed by the Statute of the Twenty Fifth of *Edward* the IIIId; as not only the Lord Chief Justice *Coke*, but divers other learned Judges and Lawyers have long since determin'd in that Case.

F I N I S.



